TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~1886~~. 253

THE C. A. TREAT MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

THE STANDARD STEEL AND IRON COMPANY AND JOSEPH T. TORRENCE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 21, 1891.

(14,950.)

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, northern division, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the circuit court of the United States for the seventh circuit, on Wednesday, the third day of December, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk*.

C. A. TREAT MANUFACTURING COMPANY
vs.
THE STANDARD STEEL AND IRON COMPANY and JOSEPH T. TORRENCE. } Trespass on the Case.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

Be it remembered that on the nineteenth day of April, 1890, came the plaintiff, by its attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its præcipe for a summons, and also at the same time filed its bond for costs in said en-
2 titled cause; which said præcipe and bond are respectively in the words and figures following, to wit:

Præcipe.

UNITED STATES OF AMERICA, } *ss*:
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois, to the May Term, A. D. 1890.

C. A. TREAT MANUFACTURING COMPANY, a Corporation Duly Organized under the Laws of the State of Missouri, Plaintiff,
vs.
STANDARD STEEL AND IRON COMPANY, a Corporation Duly Organized under the Laws of the State of Illinois, and Joseph T. Torrence, Defendants. } Case. Damage, $100,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendants, in a plea of trespass on the case, to the damage of said plaintiff in the sum of one hundred thousand dollars ($100,000), directed to the United States marshal of the northern

district of Illinois to execute, and make it returnable to the May term of said court, A. D. 1890.

JNO. S. COOPER AND W. W. GURLEY,
Pff's Att'ys.

3 To Wm. H. Bradley, Esq., clerk.
Chicago, April 19th, 1890.

(Endorsed:) Filed Ap'l 19, 1890. Wm. H. Bradley, clerk.

Bond for Costs.

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

Circuit Court, May Term, A. D. 1890.

C. A. TREAT MANUFACTURING CO., a Corporation, &c., }
vs. }
STANDARD STEEL AND IRON CO., a Corporation, &c., and JOSEPH T. TORRENCE. }

I hereby enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it *and* I hereby agree and stipulate that execution may issue against my property for any costs taxed against said plaintiff.

Dated this nineteenth day of April, A. D. 1890.

W. W. GURLEY.

(Endorsed:) Filed April 19, A. D. 1890. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the nineteenth day of April, 1890, there issued out of said clerk's office a writ of summons in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

Circuit Court of the United States of America, Northern District of Illinois, ss.

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Standard Steel and Iron Company, a corporation, &c., and Joseph T. Torrence, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto C. A. Treat Manufacturing Company, a corporation, &c., of a plea of trespass on the case, to its damage, as is alleged, of one hundred thousand dollars; and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 19th day of April, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the 114th year.

[SEAL.]

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

I have served this writ, within my district, upon Standard Steel and Iron Company therein named by delivering a true copy of the same to Joseph T. Torrence, president of the aforesaid company, on the 19th day of April, A. D. 1890; also upon Joseph T. Torrence by reading the same to — and within his presence and hearing on the 19th day of April, A. D. 1890.

FRANK HITCHCOCK,
U. S. Marshal.
GEO. N. JONES, *Deputy.*

(Endorsed:) Filed April 19, A. D. 1890. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-fifth day of April, 1890, came the plaintiff, by its attorneys, and filed in said clerk's office its declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

6 UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

In the United States Circuit Court for the Northern District of Illinois, of the May Term, A. D. 1890.

C. A. Treat Manufacturing Company, a corporation incorporated under and by virtue of the laws of the State of Missouri and which is a citizen of said State of Missouri, plaintiff in this case, by Cooper and Conley, its attorneys, complains of The Standard Steel and Iron Company, a corporation incorporated under and by virtue of the laws of the State of Illinois, which is a citizen of said State of Illinois, and of Joseph T. Torrence, who is a citizen of said State of Illinois, defendants, of a plea of trespass on the case—

For that whereas before the committing of the grievances by the defendants, as hereinafter mentioned, to wit, on the first day of July, A. D. 1888, at East Chicago, in Lake county, Indiana, at, to wit, the district aforesaid, the said defendant, The Standard Steel and Iron Company, was the owner and in the possession of a certain large tract of land, to wit, one thousand (1,000) acres, which said last-mentioned defendant had theretofore platted and laid out in lots and tracts of lands for the purpose of selling the same to divers persons and corporations and for the purpose of establishing on

said lands a manufacturing town or city, and that on, to wit, the day and year aforesaid and at the time of the committing of the grievances hereinafter mentioned, at the town of East Chicago, Indiana, to wit, at the district aforesaid, the said defendant, Joseph T. Torrence, was the president of the said defendant, The Standard Steel and Iron Company, and was the duly authorized agent thereof. 7

And the plaintiff further avers that the said defendants on, to wit, the day and year aforesaid, at East Chicago, in the county of Lake and in the State of Indiana, to wit, in the district aforesaid, were engaged in divers efforts and undertakings to induce persons and corporations to locate and build and operate, to wit, foundaries, machine and other shops, and manufacturing establishments upon the said tract of land owned and in the possession of the said defendant, The Standard Steel and Iron Company, which said tract of land was a long distance from the city of Chicago, in the district aforesaid, to wit, the distance of twenty-six miles, and which said city of Chicago was then and there a great railroad center and a terminus for a large number of railways, to wit, twenty-six, by means of which railways manufactured articles, goods, wares, merchandise, and commodities could be distributed from said city of Chicago over a large district of country at prices for the transportation thereof advantageous to those shipping and consigning manufactured articles, goods, wares, merchandise, and commodities to points over and along the lines of said railways.

And the plaintiff further avers that on, to wit, the day and year last aforesaid, to wit, at the district aforesaid, the said defendants, for the purpose of inducing divers persons and corporations to establish, build, and operate foundaries, machine and other shops, and other manufacturing establishments, to wit, at said town of East Chicago, in the county of Lake, in the State of Indiana, were offering as an inducement to such persons and corporations free gifts of certain portions of said lands owned or in possession of said defendant, The Standard Steel and Iron Company, on which to establish said, to wit, foundaries, machine, and other shops, and manufacturing establishments. 8

And the plaintiff further avers that on, to wit, the day and year last aforesaid, at the city of Hannibal, in the State of Missouri, it had established the business of manufacturing and selling car wheels, which business had theretofore been carried on for a long time, to wit, for the period of twenty-five years, and that it had acquired, amongst railroad companies and other corporations and persons dealing in such car wheels, a great and valuable reputation, and that it, said plaintiff, required in and about the manufacture and sale of said car wheels a large number of laborers and employees, to wit, eighty, and that on, to wit, the day and year aforesaid, and at said city of Hannibal, in the State of Missouri, the said plaintiff had for its president one Cornelius A. Treat, who was then and there also the owner of a large majority of the capital stock of said plaintiff, and who had the general control and management

subject to the action of the board of directors of the said plaintiff, of the business and affairs of the said plaintiff.

And the plaintiff further avers that afterwards and on, to wit, the day and year aforesaid, to wit, at the city of Chicago, in the
9 district aforesaid, the said defendants in order to induce the said Cornelius A. Treat to establish, build, and operate a manufactory for car wheels at said town of East Chicago, in the county of Lake and State of Indiana, and upon said tract of land owned and in the possession of said defendant, The Standard Steel and Iron Company, then and there offered and proposed to said Cornelius A. Treat that said The Standard Steel and Iron Company, defendant, would deed to said Cornelius A. Treat, by good and sufficient warranty deed, a strip of land three hundred (300) feet wide along the east side of the railroad right of way and running parallel with Railroad avenue on the west side of the property deeded to the United States for a water-way twelve hundreed (1,200) feet in length from east to west, the centre of said three-hundred feet strip of land being the centre line of One hundred and forty-eighth street continued eastward as then platted and recorded, and that it, said defendant, The Standard Steel and Iron Company, would also deed to said Cornelius A. Treat two (2) building sites of two (2) lots each on its, said defendant's, subdivision of part of the nort-west quarter of section twenty-nine (29), Lake county, Indiana, to be selected by said Cornelius A. Treat upon condition and for the consideration that the said Cornelius A. Treat would construct or cause to be constructed upon said tract or tracts of land so to be deeded to him and part and parcel of said one thousand (1,000) acres owned and in the possession of said defendant, The Standard Steel and Iron Company, a brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day and to commence the construction of said building on or before the first day of November, 1888.

10 And the said defendants in order to further induce the said Cornelius A. Treat to so construct or cause to be constructed said brick building of the capacity aforesaid upon said tract or tracts of land on, to wit, the day and year last aforesaid, and at, to wit, the district aforesaid, falsely, fraudulently, and deceitfully pretended and represented to the said Cornelius A. Treat that it, said defendant, The Standard Steel and Iron Company, had certain contracts with the railroad companies respectively whose railroads extended near to or through said town of East Chicago, to wit, the Chicago & Atlantic Railroad Company, the Michigan Central Railroad Company, and the Chicago and Calumet Terminal Railroad Company, in and by which said contracts with each of said last-named railroad companies it, the Standard Steel and Iron Company, was entitled to send goods, wares, merchandise, and commodities, either by itself or by other persons or corporations whom it should desire to benefit by the terms of said contracts, from the said town of East Chicago to the said city of Chicago and to bring goods, wares, merchandise, and commodities from the said city of Chicago to the said town of East Chicago at and after the rate of

freight of three dollars and fifty cents ($3.50) per car-load for the period of twenty years, and that it, said defendant, The Standard Steel and Iron Company, in consideration that the said Cornelius A. Treat should erect, construct, equip, and operate the said car-wheel works at the said town of East Chicago and upon the said tracts of land so to be deeded to him by said The Standard Steel and Iron Company that they, the said defendants, would procure and give the benefit to him, the said Cornelius A. Treat, of
11 said rate of freight from the said town of East Chicago to the said city of Chicago and from said city of Chicago to the said town of East Chicago at and after the said price or rate of three dollars and fifty cents per car-load on all goods, wares, merchandise, and commodities shipped by him, said Treat, either from the said town of East Chicago to the said city of Chicago or from the said city of Chicago to the said town of East Chicago.

And the plaintiff further avers that afterwards the said Cornelius A. Treat, by the name of C. A. Treat, relying upon said representations with reference to the said contracts for rates of freight between the said town of East Chicago and the said city of Chicago, and believing the same to be true, to wit, on the eleventh day of September, A. D. 1888, at, to wit, the city of Chicago, in the district aforesaid, entered into an agreement in writing by and with the said defendant, The Standard Steel and Iron Company, in the words and figures following, to-wit:

"Memorandum of agreement, made and entered into this 11th day of September, A. D. 1888, by and between C. A. Treat of the first part and The Standard Steel and Iron Company, of the second part witnesseth: That the said party of the first part covenants and agrees in consideration of the premises hereinafter set forth to construct or cause to be constructed a brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day, and to commence the construction of said building on or before the first day of November, A. D. 1888.

"The party of the second part hereby agrees upon the performance of the above undertaking to deed to the party of the first part
12 by a good and sufficient warranty deed a strip of land three hundred (300) feet wide, along the east side of the railroad right of way, and running parallel with Railroad avenue on the west side of the property deeded to the United States Government for a water-way, twelve hundred to thirteen hundred feet in length from east to west, the centre line of said three hundred feet strip of land being the center line of 118th street continued eastward as now platted and recorded.

"The said party of the second part further covenants and agrees to deed to said party of the first part upon the performance of above undertaking by said party of the first part, two (2) building sites of two lots each, on their subdivision of part of the northwest quarter of section twenty-nine (29), Lake county, Indiana, the lots to be selected by said party of the first part.

"The said party of the second part also covenants and agrees that

upon the performance of the above undertaking by the said party of the first part, to give said party of the first part the benefit of any and all contracts for rates of freight which they now have or may hereafter acquire.

"In witness whereof the parties hereto have executed and delivered these presents, the day and year first above written.

"C. A. TREAT. [SEAL.]
THE STANDARD STEEL
AND IRON COMPANY,
By JOSEPH T. TORRENCE, *President.*

Attest: JAMES S. PRENTISS, *Secretary.*" [SEAL.]

13 STATE OF ILLINOIS, } ss.:
County of Cook, }

Before me, Marshall Lapham, a notary public within and for the county and State aforesaid, this day personally appeared C. A. Treat, Joseph T. Torrence, president, and Jas. S. Prentiss, secretary, whose names are subscribed to the foregoing instrument, and severally acknowledged the execution of the same for the purposes therein set forth.

Given under my hand and notarial seal this eleventh day of September, A. D. 1888.

[NOTARIAL SEAL.] MARSHALL LAPHAM,
Notary Public

And the plaintiff further avers that the said agreement in writing was duly executed, acknowledged, and delivered on, to wit, the day and year last aforesaid, and at, to wit, the district aforesaid, and that thereafter, to wit, on the day and year last aforesaid, it was agreed by and between the plaintiff, said Cornelius A. Treat, and said defendants that it, the said plaintiff, should assume and take the place and stead of said Cornelius A. Treat and do and perform all the things in said contract provided for him, the said Cornelius A. Treat, to do and perform in the room and stead of him, the said Cornelius A. Treat, and that at and before the making of the last-mentioned agreement for the said plaintiff to take and assume the responsibilities and perform the obligations in said written contract contained to be assumed and performed by the said Cornelius A.

14 Treat he, the said Cornelius A. Treat, communicated to the plaintiff that the said defendants had at and before the making of the first-mentioned agreement with him, the said Cornelius A. Treat, pretended and represented to him, the said Cornelius A. Treat, that it, the said defendant, The Standard Steel and Iron Company, had said contracts with said last-mentioned railroad companies, to wit, said The Chicago & Atlantic Railroad Company, the Michigan Central Railroad Company, and the Chicago & Calumet Terminal Railroad Company, in and by which said contracts with each of said last-named railroad companies it, said The Standard Steel and Iron Company, was entitled to send goods, wares and merchandise, and commodities, either by itself or by

other persons or corporations whom it should desire to benefit by the terms of said contracts, from the said town of East Chicago to the said city of Chicago and to bring goods, wares and merchandise, and commodities from the said city of Chicago to the said town of East Chicago at and after the rate of freight of three dollars and fifty cents per car-load for the period of twenty years, and that it, said defendant, The Standard Steel and Iron Company, in consideration that he, the said Cornelius A. Treat, should erect, construct, equip, and operate the said car-wheel works at the said town of East Chicago and upon the said tracts of lands so to be deeded to him as aforesaid, that they, the said defendants, would procure and give the benefit to him, said Treat, of said rate of freight to and from said town of East Chicago and said city of Chicago, of all of which said defendants at and before the making of the agreement secondly above mentioned had notice.

15 And the said plaintiff further avers that afterwards, to wit, on the day and year last aforesaid, and at, to wit, the district aforesaid, said plaintiff, confiding in the said representations so made by the said defendants as aforesaid, then agreed to assume the liabilities and obligations in said written agreement first mentioned contained on the part of said Cornelius A. Treat to be assumed and performed, and it, said plaintiff, then and there agreed to construct or cause to be constructed a brick building of sufficient capacity to manufacture two hundred railway-car wheels per day and to commence the construction of said building on or before the first day of November, 1888.

And the plaintiff further avers that, still relying upon and confiding in the said representations so made by the said defendants as aforesaid, it commenced afterwards, to wit, on the first day of October, 1888, at said town of East Chicago, upon said tracts of land last above mentioned and described, to construct and immediately thereafter continued in the construction of said brick building of sufficient capacity to manufacture two hundred railway-car wheels per day, and finally completed the said building on, to wit, the eighteenth day of January, 1889, and also during the same period last aforesaid it, said plaintiff, built and completed divers other necessary buildings connected with said car-wheel works for the proper and reasonable operation of the said car-wheel works at a large cost, to wit, the sum of sixty-five thousand dollars, money necessarily paid, laid out, and expended in and about the construction of said buildings.

And the plaintiff further avers that in truth and in fact the said defendant, The Standard Steel and Iron Company, never had contracts with the said railroad companies respectively, to wit,

16 with said The Chicago & Atlantic Railroad Company, the Michigan Central Railroad Company, and the Chicago & Calumet Terminal Railroad Company, nor with either of them, for the transportation and conveyance to and from the city of Chicago and the town of East Chicago at and after the rate of $3.50 per car-load or any like sum; but in truth and in fact it had no contract with either of the said railroad companies last named

nor with any other railroad company whatsoever for the carrying and transportation of commodities, goods, wares, and merchandise to and from the said city of Chicago and the said town of East Chicago save and except at the regular charges of transportation made to all persons to and from said city of Chicago and said town of East Chicago at and after the large rate, to wit, of ten dollars ($10) per car-load, of all of which the defendants at the time of the making of the said false and deceitful representations and also at the time of entering into the said last-mentioned agreement had knowledge and well knew; and the plaintiff further avers that the said defendants, by means of the premises, on the day and year last aforesaid falsely and fraudulently deceived the said plaintiff in inducing it to build, construct, and put in operation the said car-wheel works, and thereby the said car-wheel works became and were of no use or value to the plaintiff, and the plaintiff has sustained great trouble and expenses, to wit, an expense of thirty-five thousand dollars ($35,000), in and about the carrying on of the business of manufacturing car wheels on the said premises, and has sustained great loss in expending and laying out its moneys in and about the construction, building, and equipping of said car-wheel works, to wit, the further sum of sixty-five thousand dollars ($65,000), to the damage to the said plaintiff of one hundred thousand dollars ($100,000).

17 2nd count. And whereas also before and at the time of the committing of the grievances by the said defendants, as hereinafter mentioned, said defendant, The Standard Steel and Iron Company, was possessed of a certain other large tract of land, to wit, one thousand (1,000) acres, situated, lying, and being in said town of East Chicago, in the county of Lake and State of Indiana, upon which last-mentioned land the said defendants were desirous of procuring divers persons and corporations to locate, build, and operate shops and manufactories, requiring the employment and attendance thereat of divers mechanics, laborers, clerks, agents, and other employees, who by reason of such employment and attendance might thereby be induced to purchase town lots from said defendant, The Standard Steel and Iron Company, forming part of said last-mentioned tract of land, and erect dwelling-houses thereon in which to dwell, and that thereby the said defendants would be enabled to build up a large town or city upon and around said last-mentioned tract of land.

And the plaintiff avers that on, to wit, the first day of July, 1888, at, to wit, the district aforesaid, the said defendant Joseph T. Torrence was the president of said defendant The Standard Steel and Iron Company and was then and there as such president duly authorized to act for and on its behalf.

And the plaintiff further avers that afterwards, to wit, on the first day of August, A. D. 1888, at, to wit, the district aforesaid, the said defendant, Joseph T. Torrence, acting as such president as aforesaid, for the purpose of inducing said plaintiff to locate, build, and operate upon said last-mentioned tract of land, of which said defendant,

The Standard Steel and Iron Company, was there possessed, a
18 certain, to wit, car-wheel works, having a capacity to manufacture and produce, to wit, two hundred (200) car wheels per day and requiring the employment and attendance therein and thereat of a large number of mechanics, laborers, clerks, and other employees, to wit, one hundred and fifty (150), then and there falsely, fraudulently, and deceitfully pretended and represented to said plaintiff that said defendant, The Standard Steel and Iron Company, then and there had the advantage of a rate of freight upon all goods, wares, merchandise, and commodities shipped to and from the said town of East Chicago, in Lake county and State of Indiana, and the city of Chicago, in the said district, of three dollars and fifty cents ($3.50) for each car-load, which said rate of freight was secured to it, the Standard Steel and Iron Company, and to such persons and corporations as should locate, build, and operate manufactories upon its, said last-named defendant's, said tract of one thousand (1,000) acres of land and to whom said last-mentioned defendant should agree to give the benefit of said rate of freight, and that said rate of freight was so secured to said last-named defendant and to said last-named persons and corporations to whom it should choose to give the benefit thereof for the period of twenty (20) years then next ensuing in and by virtue of a certain contract with a certain railroad company, to wit, the Michigan Central Railroad Company, then built and in operation between said town of East Chicago and said city of Chicago, and then and there engaged in the business of transporting goods, wares, merchandise, and commodities to and from the said town of East Chicago and said city of Chicago as a common carrier for hire, and that if said plaintiff should so locate, build, and operate upon said last-mentioned tract of land pos-
sessed by said defendant, The Standard Steel and Iron Com-
19 pany, its said car-wheel works last mentioned and described said defendants would give the benefit and advantage of said rate of freight last mentioned to and from said town of East Chicago and said city of Chicago to said plaintiff for the transportation and carriage of all goods, wares and merchandise, and commodities to and from said town and city last mentioned.

And the plaintiff further avers that, relying upon said last-mentioned false, fraudulent, and deceitful pretenses and representations aforesaid in this count above mentioned so made by said defendant Torrence as such president to said plaintiff as aforesaid, said plaintiff afterwards, to wit, on the 10th day of August, A. D. 1888, at said town of East Chicago, to wit, at the district aforesaid, located and commenced to build upon said last-mentioned tract of land so possessed by said defendant, The Standard Steel and Iron Company, as aforesaid said last mentioned and described car-wheel works, and, continuing so to rely upon said last-mentioned false, fraudulent, and deceitful pretenses and representations, said plaintiff on, to wit, the third day of June, A. D. 1889, at said town of East Chicago, to wit, at the district aforesaid, had built, completed, and put in operation its said car-wheel works last mentioned at a great cost and expense to said plaintiff, amounting to a large sum of money neces-

sarily paid, laid out, and expended by it, said plaintiff, in so locating, building, completing, and putting in operation said last-mentioned car-wheel works, to wit, the sum of sixty-five thousand dollars ($65,000), and the said plaintiff thereafter, still continuing to believe and confide in said last-mentioned false, fraudulent, and deceitful pretenses and representations, on, to wit, the third
20 day of June, and at the said town of East Chicago, to wit, at the district aforesaid, put in operation and continued to operate said last-mentioned car-wheel works until, to wit, the 7th day of April, A. D. 1890, of all of which the said defendants then and there had notice.

And the plaintiff further avers that said defendant, The Standard Steel and Iron Company, did not in truth and fact at the time of said defendants, Torrence, as such president, making said last-mentioned false, fraudulent, and deceitful pretenses and representations have the advant-ge of a rate of freight upon all goods, wares and merchandise, and commodities shipped to and from said town of East Chicago and said city of Chicago of three dollars and fifty cents for each car-load secured to it as above in this count mentioned and to such persons and corporations as should locate, build, and operate manufactories and shops upon said defendant's, The Standard Steel and Iron Company's, said last-mentioned tract of one thousand acres of land, and to whom said last-mentioned defendant should agree to give the benefit of said last-mentioned rate of freight, nor was said last-mentioned rate of freight so secured to said last-mentioned defendant and to said persons and corporations to whom it should agree to give the benefit thereof for twenty (20) years then next ensuing in and by virtue of a certain contract with a certain railroad company, to wit, said Michigan Central Railroad Company; but, on the contrary thereof, the plaintiff avers the truth to be that said last-mentioned defendant did not at the time of the making of said last-mentioned false, fraudulent, and deceitful pretenses and representations to it by said defendant Torrence as such president have any contract with said Michigan Central Rail-
road Company or with any other railroad company to trans-
21 port said goods, wares, merchandise, and commodities to and from said town of East Chicago and said city of Chicago at a rate of freight of three dollars and fifty cents ($3.50) per car-load; and the plaintiff avers the truth to be that the costs, charges, and rates for the transportation of goods, wares, merchandise, and commodities by rail to and from said last-mentioned town and city were then and there and have continued from thence, to wit, until the commencement of this suit, largely in excess of said rate of three dollars and fifty cents ($3.50) per car-load, and the same were then and there, to wit, ten dollars per car load, of all which said defendants then and there had notice and knowledge.

And the plaintiff further avers that to operate said last-mentioned car-wheel works at said East Chicago it, said plaintiff, necessarily then and there required the transportation by rail to and from said last-mentioned town and city of large amounts of goods, wares, merchandise, or commodities, to wit, twenty (20) car-loads per day, and

that in order to successfully and profitably carry on and conduct the said operation of said last-mentioned car-wheel works at said town of East Chicago said plaintiff necessarily required a rate of freight much lower than said last-mentioned rate of ten dollars per car, and the said last-mentioned rate then and there was and became and hath ever since continued ruinous to the business of said plaintiff in operating said last-mentioned car-wheel works, of all of which said defendants then and there had notice and knowledge; and the plaintiff further avers that the said defendants, by means of the premises, on, to wit, the said first day of August, A. D. 1888, at, to wit, the district aforesaid, falsely and fradulently de-
22 ceived the said plaintiff in inducing it to locate, build, and operate said car-wheel works upon the said last-mentioned tract of land possessed by said defendant, The Standard Steel and Iron Company, at said town of East Chicago, and thereby said last-mentioned car-wheel works became and were of no use or value to said plaintiff, and the said plaintiff hath sustained great damage, trouble, and expense in operating and carrying on said car wheel works and in paying rates of freight for transporting its goods, wares, merchandise, and commodities to and from said town of East Chicago and said city of Chicago, to the plaintiff's damage of one hundred thousand dollars ($100,000).

3rd count. And whereas also before the committing of the grievances by the defendants, as hereinafter mentioned, the said defendant, The Standard Steel and Iron Company, was the owner of a certain other large amount of land, to wit, one thousand (1,000) acres, situated in the town of East Chicago, in the county of Lake and State of Indiana, on which said land the said defendant last named and the said other defendant, said Joseph T. Torrence, as president of said defendant, The Standard Steel and Iron Company, were endeavoring to build and establish a manufacturing town or city for the purpose of enabling them, the said defendants, to sell lots and parcels of said last-mentioned land to divers persons and corporations at enhanced prices therefor; that afterwards and before the committing of the grievances hereinafter mentioned, to wit, on the 11th day of September, A. D. 1888, one Cornelius A. Treat, by the name, style, and description of C. A. Treat, had contracted and agreed with the said defendant, The Standard Steel and Iron
23 Company, that he, the said Cornelius A. Treat, would construct or cause to be constructed a certain other brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day and commence the construction of said building on or before the first day of November, A. D. 1888, upon certain parcels of said last-mentioned lands so owned by said defendant, The Standard Steel and Iron Company, as aforesaid. In consideration whereof the said defendant, The Standard Steel and Iron Company, then and there agreed upon the performance of the said agreement by him, the said Cornelius A. Treat, in the matter of constructing or causing to be constructed said last-mentioned brick building, that it, the said last-mentioned defendant, would convey by warranty deed certain parcels of said last-mentioned land owned

by said defendant, The Standard Steel and Iron Company, and further agreed to give to said Cornelius A. Treat the benefit of any and all contracts for rates of freight which it, the said The Standard Steel and Iron Company, then had or might thereafter acquire.

And the plaintiff further avers that the said defendants at and before the making of the said agreement with the said Cornelius A. Treat falsely, fraudulently, deceitfully pretended and represented to the said Cornelius A. Treat that said defendant, The Standard Steel and Iron Company, then had a rate of freight to and from the said city of Chicago, in the district aforesaid, and the said town of East Chicago of three dollars and fifty cents per car-load on all shipments of freight made between said city and town, and which said last-mentioned rate of freight, in case the said Cornelius A. Treat should so enter into said last-mentioned contract and build said brick building of sufficient capacity to manufacture two
24 hundred (200) railway-car wheels per day and commence the construction thereof on or before the first day af November, A. D. 1888, he, the said Cornelius A. Treat, should have the benefit of on all shipments made by or to him, the said Cornelius A. Treat, to and from the said city of Chicago and the said town of East Chicago.

And the plaintiff further avers that the said Cornelius A. Treat, not desiring himself personally to carry out the said last-mentioned contract, it was afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, agreed by and between the plaintiff, said Cornelius A. Treat, and said defendants that it, the said plaintiff, should take the place and stead of him, the said Cornelius A. Treat, in the said last-mentioned contract, and that it, the said plaintiff, should construct or cause to be constructed said last-mentioned brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day, and commence the construction of the said building on or before the first day of November, A. D. 1888, in the room and stead of the said Cornelius A. Treat, and at and before the making of the last-mentioned agreement the said Cornelius A. Treat communicated to the plaintiff that the defendants had at and before the making of the above-mentioned contract with him, the said Cornelius A. Treat, represented to the said Cornelius A. Treat that the said defendant, The Standard Steel and Iron Company, then had a rate of freight to and from the said city of Chicago, in the district aforesaid, and the town of East Chicago of three dollars and fifty cents per car-load on all shipments of freight made between said city and town, and which said last-mentioned rate of freight in case the said Cornelius A.
25 Treat should so enter into said first-mentioned contract and build said brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day, and commence the construction thereof on or before the first day of November, A. D. 1888, he, the said Cornelius A. Treat, should have the benefit of on all shipments made by or to him, the said Cornelius A. Treat, to and from the said city of Chicago and the said town of East Chicago, of all of which the said defendants at and before the making

of the agreement secondly above mentioned had notice, and the said plaintiff, confiding in the said representations so made by the defendants as aforesaid, then agreed to carry out the said first-mentioned contract in the place and stead of the said Cornelius A. Treat, and to construct or cause to be constructed upon parcels of said lands, to wit, one thousand (1,000) acres, in the said town of East Chicago so owned by the said defendant, The Standard Steel and Iron Company, a brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day, and commence the construction of said building on or before the first day of November, A. D. 1888, in the room and stead of the said Cornelius A. Treat, and the plaintiff afterwards, to wit, on the day and year last aforesaid, commenced the construction of said brick building of sufficient capacity to manufacture two hundred (200) railway-car wheels per day, and continued in the construction thereof until, to wit, the third day of June, A. D. 1889, when it had completed the construction of the said brick building with the capacity aforesaid upon said certain parcels of said lands, to wit, one thousand (1,000) acres, so owned by said defendant, The Standard Steel and Iron Company, in the said town of East Chicago aforesaid, whereas in truth and in fact said defendant, The Standard Steel

26 Company, did not then and at the time of the making said false representations in this count first above mentioned have the rate of freight to and from the said city of Chicago, in the district aforesaid, and the said town of East Chicago of three dollars and fifty cents per car-load on all shipments of freight made between said last-mentioned city and town, but, on the contrary thereof, the said defendant, The Standard Steel and Iron Company, was then and there obliged to pay and did pay a much larger rate of freight on all shipments made by or to it between said city and town than said rate of three dollars and fifty cents per car-load, and was then and there obliged to pay and did pay, to wit, the sum of ten dollars ($10) per car-load on all shipments of freight made by or to it from and to the said city and town, as the said defendants at the time of making their said false and deceitful representations and also at the time of their entering into the last-mentioned agreement well knew; and the plaintiff further avers that the said defendants, by means of the premises, on, to wit, the 11th day of September, A. D. 1888, falsely and fraudulently deceived the said plaintiff in assuming and agreeing to carry out the terms and provisions of said first-mentioned contract by and between the said Cornelius A. Treat and the said defendant, The Standard Steel and Iron Company, on the part of him, said Treat, and to assume and take the place and stead of him, the said Cornelius A. Treat, in the said first-mentioned contract, and thereby the said last-mentioned brick building became and was of no use or value to the plaintiff, and the plaintiff thereby sustained great trouble and expense, to wit, an expense of sixty-five thou-

27 sand dollars ($65,000), in and about the construction of the said last-mentioned brick building, and a further expense in and about carrying on the business of manufacturing car wheels in said last-mentioned brick building in said town of East Chicago, at

a great loss and expense to the said plaintiff, to wit, thirty-five thousand dollars ($35,000), to the plaintiff's damage of $100,000.

4th count. And whereas also heretofore and before the committing of the grievances by the said defendants, as hereinafter mentioned, the said defendant, The Standard Steel and Iron Company, was seized of the title in and to various tracts or parcels of certain other lands, to wit, eight hundred (800) acres, located, lying, and being in the town of East Chicago, in the county of Lake and State of Indiana, which said lands were of but little value except for agricultural purposes and not worth to exceed, to wit, fifty dollars ($50) per acre, and which said lands were situated a long distance from any markets or centers of trade and were then and there, to wit, twenty-six miles distant from the city of Chicago, in the district aforesaid, and said defendants had theretofore caused to be platted and laid out a large portion of said lands, to wit, five hundred (500) acres, on which to establish a manufacturing town, and which said last-mentioned lands, by reason of their distance from the said city of Chicago, could be made valuable to the said defendant, The Standard Steel and Iron Company, in case goods, wares, and merchandise and other commodities could be shipped and transported to and from the said last-mentioned lands in said town of East Chicago and the said city of Chicago, in the district aforesaid, at and after the low rate of freight, to wit, three dollars and fifty
28 cents ($3.50) per car-load.

And the plaintiff further avers that the only practical means of transporting goods, wares, and merchandise and other commodities to and from said city of Chicago and said lands in said town of East Chicago was by means of certain railroads carrying goods, wares, merchandise, and other commodities for hire between said town and city, to wit, the railroads of the Michigan Central Railroad Company, the Chicago & Atlantic Railroad Company, and Chicago — Calumet Terminal Railroad Company, and that afterwards, to wit, on the first day of July, A. D. 1888, at the said town of East Chicago, to wit, in the district aforesaid, the said defendant, The Standard Steel and Iron Company, was then and there paying a large rate of freight on all goods, wares, merchandise, and other commodities shipped by or to it *and* from the said city of Chicago and the said last-mentioned lands in the said town of East Chicago, to wit, at and after the rate of ten dollars ($10) per car-load, which said last-mentioned rate of freight rendered it unprofitable for persons and corporations to establish upon said last-mentioned lands in said town of East Chicago and maintain and operate thereon manufacturing establishments, as they, the said defendants, then well knew; and the plaintiff further avers that afterwards, to wit, on the day and year last aforesaid, at, to wit, the town of East Chicago, to wit, the district aforesaid, the said defendants then and there combined, conspired, and confederated together to falsely give out, represent, and pretend to the public that it, said The Standard Steel and Iron Company, had secured to itself by contracts running twenty years thereafter with certain railroad companies engaged in

the business of transporting goods, wares, and merchandise
29 and other commodities to and from the city of Chicago and
the said last-mentioned lands in the town of East Chicago at
and after a rate of three dollars and fifty cents per car-load, and
that certain persons and corporations who should locate, construct,
and operate manufacturing establishments on said last-mentioned
lands in said town of East Chicago should have the benefit and ad-
vantage of said rate of freight on all goods, wares, merchandise,
and other commodities shipped by them respectively to and from
said lands in said town of East Chicago and said city of Chicago.

And the plaintiff further avers that afterwards, to wit, on the day
and year last aforesaid, at, to wit, the district aforesaid, the said defend-
ants, in furtherance of their said combination, confederacy, and con-
spiracy and for the purpose of inducing the said plaintiff to locate,
build, maintain, and operate its certain manufacturing establish-
ment upon said last-mentioned lands in the said town of East Chi-
cago, falsely, fraudulently, deceitfully, and wickedly pretended and
represented to the said plaintiff that it, said The Standard Steel
and Iron Company, then and there had contracts running and in
force for twenty (20) years thereafter with certain railroad com-
panies engaged in the business of transporting goods, wares, mer-
chandise, and other commodities to and from said last-mentioned
lands in the town of East Chicago and said city of Chicago, in the
district aforesaid, to wit, with the Michigan Central Railroad Com-
pany, the Chicago & Atlantic Railroad Company, and the
Chicago & Calumet Terminal Railroad Company, and in and
by the terms of such last-mentioned contracts it, the said de-
fendant, The Standard Steel and Iron Company, was enabled
to transport to and from its said lands in said town of
East Chicago and said city of Chicago goods, wares,
30 merchandise, and other commodities at and after the rate of
three dollars and fifty cents per car-load, and that it, the said
last-named defendant, had the right to give the benefit of said last-
mentioned contracts for said last-mentioned rate of freight to said
plaintiff in case it, the said plaintiff, should locate, construct, main-
tain, and operate its said manufacturing establishment upon said
last-mentioned lands in said town of East Chicago; and the plaintiff
further avers that afterwards, to wit, on the 11th day of September,
A. D. 1888, at, to wit, the district aforesaid, it, the said plaintiff, relying
upon said false, fraudulent, and deceitful pretenses and representa-
tions in this count last above mentioned and believing the same to
be true, and confiding therein, it, the said plaintiff, then and there
erected, constructed, operated, and maintained its said manufactur-
ing establishment on said last-mentioned lands in said town of East
Chicago and continued after the construction thereof to maintain and
operate the same for a long space of time, to wit, from thence until
the first day of April, A. D. 1890.

And the plaintiff further avers that whilst it was continuing to
rely upon and confide in said false, fraudulent, and deceitful pre-
tenses and representations in this count last mentioned it necessa-
rily paid, laid out, and expended a large sum of money in and

about the location, construction, maintenance, and operation of its last-mentioned manufacturing establishment, to wit, the sum of one hundred thousand dollars, of all of which the said defendants then and there had notice and knowledge.

31 And the plaintiff further avers that its last-mentioned manufacturing establishment, by reason of the false, fraudulent, and deceitful pretenses and representations of the said defendants in this count last above mentioned so made to it, the said plaintiff, by said defendants in pursuance of said combination, confederacy, and conspiracy by and between the said defendants, became and is of little value to it, to wit, not to exceed the value of ten thousand dollars ($10,000), and its said business of maintaining and operating said manufacturing establishment necessarily involved said plaintiff in great loss and damage, to wit, the damage to the plaintiff of one hundred thousand dollars ($100,000), and therefore it brings its suit, etc.

COOPER & GURLEY,
Plaintiff's Attorneys.

(Endorsed:) Filed Ap'l 25, 1899. Wm. H. Bradley, clerk.

32 Afterward, to wit, on the fifth day of May, 1899, came the defendants, by their attorneys, and filed in said clerk's office their plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States for the Northern District of Illinois.

THE STANDARD STEEL & IRON COMPANY and JOSEPH T. TORRENCE *ads.* THE C. A. TREAT MANUFACTURING COMPANY.	Gen. No., 21616. Case.

And the said defendants, by Isham, Lincoln & Beale and R. S. Thompson, their attorneys, come and defend the wrong and injury, when, etc., and say that they are not nor is either of them guilty of the said supposed grievance above laid to their charge or any or either or any part thereof in manner and form as the said plaintiff hath above thereof complained against them; and of this they put themselves upon the country, etc.

By ISHAM, LINCOLN & BEALE AND
R. S. THOMPSON,
Attorneys for Defendants.

And the plaintiff doth the like.

COOPER & GURLEY,
Plaintiff's Attorneys.

33 (Endorsed:) Filed May 5, 1899. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-ninth day of September, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

C. A. TREAT MANUFACTURING COMPANY)
vs.
STANDARD STEEL AND IRON COMPANY and JOSEPH T. TORRENCE.)

Now come the parties, by their attorneys, and, on motion of the plaintiff, by its attorney, leave is given it to file additional counts to the declaration herein, and thereupon the defendants are hereby ruled to plead to the declaration as amended within twenty days.

34 On the same day, to wit, on the twenty-ninth day of September, 1890, came the plaintiff, by its attorneys, and filed in said clerk's office two additional counts in said entitled cause; which said counts are in the words and figures following, to wit:

Additional Counts.

UNITED STATES OF AMERICA,)
Northern District of Illinois,) *ss.:*

In the United States Circuit Court for the Northern District of Illinois.

C. A. TREAT MANUFACTURING COMPANY)
vs.
STANDARD STEEL AND IRON COMPANY and JOSEPH L. TORRENCE.)

Two additional counts filed by plaintiff by leave of the court.

First additional count. And whereas also before and at the time of the committing of the grievances by the said defendants as hereinafter mentioned said defendant, The Standard Steel and Iron Company, was possessed of a certain other large tract or parcel of land, to wit, one thousand (1,000) acres, situated in or around a certain
35 village or town known and called East Chicago and situated a long distance from the city of Chicago, in the district aforesaid, to wit, twenty-six (26) miles, and many miles distant from any other large city or market, to wit, one hundred (100) miles, and a certain railroad corporation, to wit, the Chicago & Calumet Terminal Railway Company, was then and there possessed of a certain projected line of railway, partially built and in process of completion, commencing at said East Chicago and projected and then and there being built so as to connect by rail said East Chicago with certain other railroads extending from said city of Chicago to divers other large cities and commercial centres and manufacturing points northwest, southwest, and east from said East Chicago, to wit, with the Chicago and Atlantic, the Michigan Central, the Pittsburgh, Ft.

Wayne and Chicago, the Louisville, New Albany and Chicago, and the Chicago and Northwestern Railroad Companies, so that when said Chicago & Calumet Terminal railway should be completed to a connection or junction with each of said railroads last mentioned respectively there would thereby be a continuous line of railway not only between said East Chicago and said city of Chicago, but also between said East Chicago and said other large cities and commercial centres and manufacturing points in the United States northwest, southwest, and east from said East Chicago.

And the plaintiff avers that on, to wit, the 10th day of September, A. D. 1888, at the city of Chicago, to wit, at the district aforesaid, the said defendants, for the purpose of inducing and persuading individuals and corporations to locate and build and operate foundries, machine shops, and manufactories upon said last-mentioned tract or parcel of land belonging to said defendant, The Standard Steel and Iron Company, in and around said East Chicago and thereby make a market for said lands, then and there combined, conspired, and confederated together to induce and persuade said individuals and corporations to locate, build, and operate on said last-mentioned parcel or tract of land in and around said East Chicago their certain foundries, machine shops, and manufactories by falsely, fraudulently, and deceitfully representing, pretending, and giving out to said last-mentioned individuals and corporations that they, said defendants, then and there had secured, by written contract between said defendants, to wit, said Standard Steel and Iron Company and Joseph T. Torrence, and certain railroad companies, to wit, said Chicago and Atlantic, Michigan Central, Louisville, New Albany and Chicago, the Pittsburgh, Ft. Wayne and Chicago, and the Chicago and Northwestern Railroad Companies respectively, whereby all goods, wares, merchandise, and commodities shipped to or from said city of Chicago and said East Chicago and to or from such individuals or corporations as should locate, build, and operate their respective foundries, machine shops, and manufactories upon said last-mentioned tract of land in and around said East Chicago would be shipped and carried by said railroads of said last-mentioned railroad companies and by said railroad of said Chicago & Calumet Terminal Railway Company at and after the low rate of three dollars and fifty cents per car-load, and that the rates of freight on all goods, wares, merchandise, and commodities shipped by rail by or to such last-mentioned individuals and corporations as should locate, build, and operate their said foundries, machine shops, and manufactories upon said last-mentioned tract or parcel of land in and around said East Chicago would be the same to and from said East Chicago and all other large cities and commercial centres and manufacturing points northwest, southwest, and east that were given to and from said city of Chicago and said last-mentioned large cities, commercial centers, and manufacturing towns northwest, southwest, and east from said East Chicago.

And the plaintiff further avers that the rates of freight by rail between said East Chicago and city of Chicago and between said East

Chicago and said other points and other large cities and other commercial centers and manufacturing points northwest, southwest, and east were then and there of great pecuniary importance to all such persons and corporations as should locate, build, and operate foundries, machine shops, and manufactories on said last-mentioned tract or parcel of land in and around said East Chicago, and that with the same rates of freight by rail between large cities, commercial centers, and manufacturing points northwest, southwest, and east and said East Chicago that were given between said last-mentioned large cities, commercial centers, and manufacturing points and said city of Chicago and said rate of freight by rail of three dollars and fifty cents per car-load between said East Chicago and said city of Chicago the said individuals and corporations which should so locate, build, and operate their foundries, machine shops, and manufactories on said last-mentioned tract or parcel of land in and around said East Chicago would be able to compete for business on favorable terms with *light* foundries, machine shops, and manufactories in said city of Chicago, which then and there was and now is a large city, in and around which then were and now are located and in operation many foundries, machine shops, and manufactories doing a successful and profitable business.

And the plaintiff further avers that before and at the time of the committing of the grievances by the said defendants hereinafter mentioned it had established and in operation a large foundry and machine shop in the city of Hannibal, in the State of Missouri, at which it was then and there and has been for a number of years then last past engaged in the successful and profitable founding and manufacture, among other things, of car wheels used in and about the construction of railway cars, and that one Cornelius A. Treat was then and there the president of the plaintiff corporation and one of the directors thereof, and also a stockholder therein, owning a majority of all the capital stock of the said plaintiff corporation.

And the plaintiff further avers that afterwards, on, to wit, the 10th day of September, A. D. 1888, at the city of Chicago, to wit, at the district aforesaid, the said defendants, in furtherance of their said last-mentioned combination, confederacy, and conspiracy and for the purpose of inducing the said Cornelius A. Treat, either by himself or in the name of the said plaintiff, to locate, build, and operate a foundry and manufactory for the manufacture of car wheels for railways upon said last-mentioned tract or parcel of land in and around said East Chicago, falsely, fraudulently, deceitfully, and wickedly pretended and represented to the said Cornelius A. Treat that said defendants, to wit, The Standard Steel and Iron Company and Joseph T. Torrence, then and there had certain rates of freight by rail secured to them in and by, to wit, certain written contracts or agreements in writing by and with certain railway companies, to wit, the Chicago and Calumet Terminal Railway Company, the Chicago and Atlantic Railway Company, and the Louisville, New Albany and Chicago Railway Company, in and by which said written contracts or agreements the said de-

fendants, to wit, the said defendants last named, had secured for a period of twenty years a certain low rate of freight by rail between said city of Chicago and said East Chicago upon all goods,
41 wares, merchandise, and commodities shipped by or to them, said last-named defendants, from or to said East Chicago and said city of Chicago, to wit, three dollars and fifty cents per car-load and which said rate of freight the said Cornelius A. Treat, in case he by himself or in the name of the said plaintiff should locate, build, maintain, and operate said foundry and manufactory for the manufacture of car wheels for railways, would get the benefit of on all goods, wares, merchandise, and commodities shipped by him or by the said plaintiff from the said East Chicago to said city of Chicago or received by himself or by the said plaintiff at the said East Chicago from the said city of Chicago, in the district aforesaid.

And the plaintiff further avers that to further carry out said combination, confederacy, and conspiracy and for the purpose of further inducing the said Cornelius A. Treat, either by himself or in the name of said plaintiff, to locate, build, maintain, and operate said foundry and machine shop for the purposes aforesaid on, to wit, the day and year last aforesaid, to wit, at the city of Chicago, in the district aforesaid, the said defendants further falsely, fraudulently, deceitfully, and wickedly pretended and represented to
42 the said Cornelius A. Treat that rates of freight by rail had already been established by certain railway companies, to wit, the said Chicago and Calumet Terminal Railway Company, the Chicago and Atlantic, the Michigan Central, the Louisville, New Albany and Chicago, the Pittsburgh, Ft. Wayne, and Chicago, and the Chicago and Northwestern Railway Companies and other railroad companies whose railroads connected or would connect with the said railroad of the said Chicago and Calumet Terminal Railway Company when the last-mentioned railroad should be completed to such points of connection between said East Chicago and said other large cities, commercial centers, and manufacturing points to the Northwest, Southwest, and East, which were the same rates of freight by rail as had been established and given between said city of Chicago and said last-mentioned large cities, commercial centers, and manufacturing points.

And the plaintiff further avers that afterwards, to wit, on the 11th day of September, A. D. 1888, at the city of Chicago, to wit, in the district aforesaid, the said Cornelius A. Treat then and there believed in and relied upon said false, fraudulent, deceitful, and wicked pretenses and representations so made by said defend-
43 ant to him as aforesaid, and, so relying thereon and continuing to rely thereon, he, the said Cornelius A. Treat, afterwards, to wit, on the 11th day of September, A. D. 1888, at the city of Chicago, to wit, at the district aforesaid, agreed to and with the said defendant, The Standard Steel and Iron Company, amongst other things, to construct or cause to be constructed on said last-mentioned tract or parcel of land in and around the said East Chicago and belonging to said defendant, The Standard Steel and Iron

Company, a brick building of sufficient capacity to manufacture two hundred railway-car wheels per day, and commence the construction of said building on or before the first day of November, A. D. 1888.

And plaintiff further avers that afterwards, to wit, on the day and year last aforesaid, at the city of Chicago, to wit, at the district aforesaid, it was agreed by and between the said plaintiff, the said Cornelius A. Treat, and said defendant, The Standard Steel and Iron Company, that it, the said plaintiff, should assume and take the place and stead of the said Cornelius A. Treat in the said agreement and do and perform all the things in and by said agreement provided for him, the said Cornelius A. Treat, to do and perform in the room and stead of the said Cornelius A. Treat—

that is to say, that the said plaintiff then and there
11 agreed with said defendant, The Standard Steel and Iron Company, to construct or cause to be constructed upon said tract or parcel of land belonging to said last-named defendant in and around East Chicago a brick building of sufficient capacity to manufacture two hundred railway-car wheels per day, and to commence the construction of said building on or before the first day of November, 1888, and that at and before the making of the last-mentioned agreement of the said plaintiff to take and assume the responsibilities and perform the obligations of the said contract on the part of said Cornelius A. Treat to be performed, on, to wit, the 11th day of September, 1888, at, to wit, the district aforesaid, he, the said Cornelius A. Treat, communicated to the said plaintiff that the said defendants had at and before the making of the first agreement with him, the said Cornelius A. Treat, pretended and represented to him, the said Cornelius A. Treat, that the said defendants, to wit, The Standard Steel and Iron Company and Joseph T. Torrence, then and there had certain rates of freight by rail secured to them in and by certain contracts and agreements in writing by and with certain railway companies, to wit, the Chicago and Atlantic Railway Company and the Louisville, New Albany and Chicago

Railway Company, in and by which written contracts and
45 agreements the said defendants, to wit, the said defendants last named, had secured to themselves for a period of twenty years a certain low rate of freight by rail between the said city of Chicago and the said East Chicago upon all goods, wares, merchandise, and commodities shipped by or to them, the said last-named defendants, from or to the said East Chicago and the said city of Chicago, to wit, three dollars and fifty cents per car-load, and which said low rate of freight the said Cornelius A. Treat, in case he by himself or in the name of the said plaintiff should locate, build, maintain, and operate said foundry and manufactory for the manufacture of railway-car wheels, would get the benefit of on all goods, wares, merchandise, and commodities shipped by him or the said plaintiff from the said East Chicago to the said city of Chicago or received by himself or the said plaintiff at the said East Chicago from the said city of Chicago, in the district aforesaid, and that the said defendants had, at and before the making of the first-mentioned

agreement with him, the said Cornelius A. Treat, pretended and represented to him, the said Cornelius A. Treat, that rates of freight by rail had already been established by certain railway com-
46 panies, to wit, the said Chicago and Atlantic, the Chicago and Calumet Terminal, the Michigan Central, the Louisville, New Albany and Chicago, the Pittsburgh, Ft. Wayne and Chicago, and the Chicago and Northwestern Railway Company and other railroad companies whose roads connected with or would connect with the said railway of the said Chicago and Calumet Terminal Railway Company when the last-mentioned railroad should be completed to such points of connection between the said East Chicago and said other large cities, commercial centers, and manufacturing points to the northwest, southwest, and east, which were the same rates of freight by rail as had been established and given between the said city of Chicago and said other large cities, commercial centers, and manufacturing points.

And the plaintiff further avers that afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, said plaintiff, relying upon said pretenses and representations so made by the said defendants as aforesaid, then agreed to assume the obligations in said agreement first mentioned on the part of Cornelius A. Treat to be assumed and performed, and it, the said plaintiff, then and there agreed to construct or cause to be constructed a brick build-
47 ing of sufficient capacity to manufacture two hundred railway-car wheels per day, and to commence the erection of said building on or before the first day of November, A. D. 1888; and the plaintiff further avers that, continuing to rely upon and confide in the representations made by said defendants as aforesaid, it afterwards, to wit, on the first day of October, A. D. 1888, at said town of East Chicago, upon said tracts or parcels of land belonging to the said The Standard Steel and Iron Company, did commence to construct and immediately thereafter continued in the construction of the said brick building of sufficient capacity to manufacture two hundred railway-car wheels per day, and completed the said building on, to wit, the 18th day of January, A. D. 1889, and also during the same period last aforesaid it, the said plaintiff, built and completed divers other necessary buildings connected with the said car-wheels works for the proper construction and use of said car-wheels works at a large cost, to wit, the sum of sixty-five thousand dollars ($65,000) of money necessarily paid, laid out, and expended in and about the construction of the said building; and the said plaintiff further avers that in truth and in fact the said defendants, to wit, The Standard Steel & Iron Company and Joseph T. Torrence,
48 did not nor did either of them at the time of the making of said false and fraudulent representations to said Cornelius A. Treat, nor at the time of the said communication and reporting of said false and fraudulent representations by the said Cornelius A. Treat to said plaintiff with the knowledge of said defendants, nor at any other time had any written contracts or agreements in writing by and with the said Chicago and Atlantic Railway Company and said Louisville, New Albany and Chicago Railway Com-

pany, or with either of them, by which the said defendants last named had secured to themselves for a period of twenty years said rate of freight by rail of three dollars and fifty cents per car-load between the said city of Chicago and the said East Chicago upon all goods, wares, merchandise, and commodities shipped by or to them from or to said East Chicago and said city of Chicago, nor did said defendants last named at the time said false and fraudulent representations were communicated or repeated to the said plaintiff by and with the knowledge of the said defendants or at any other time have a rate of freight on all goods, wares, merchandise, and commodities shipped by them from said East Chicago to the said city of Chicago or received by them from said city of
49 Chicago at said East Chicago at and after a rate by rail of three dollars and fifty cents per car-load, but, on the contrary thereof, the plaintiff avers that the rate of freight by rail at the time of the committing of the grievances by the said defendants as hereinabove in this count mentioned and set forth on all goods, wares, merchandise, and commodities shipped by said defendants last named from said East Chicago to the city of Chicago or received by them at said East Chicago from said city of Chicago was at and after a certain larger rate of freight, to wit, ten dollars per car-load.

And the plaintiff further avers that at the time of the making of said false and fraudulent pretenses and representations by said defendants as in this count hereinbefore mentioned and set forth to the said Cornelius A. Treat, and at the time that the said Cornelius A. Treat communicated and reported the same to said plaintiff as hereinbefore in this count mentioned and set forth, in truth and in fact the rate of freight by rail had not been established by said certain railway companies, to wit, the Chicago and Calumet Terminal Railway Company, the Chicago and Atlantic, the Michi-
gan Central, the Louisville, New Albany and Chicago, the
50 Pittsburgh, Ft. Wayne and Chicago, and the Chicago and Northwestern Railway Companies and other railway companies whose railroads connected or would connect with the said Chicago and Calumet Terminal Railway Company when the last-named railway should be completed to such points of connection between said East Chicago and said other large cities, commercial centers, and manufacturing points to the northwest, southwest, and east, which were the same rates of freight by rail as had been established and given between said city of Chicago and said last-mentioned cities, commercial centers, and manufacturing points as falsely, fraudulently, deceitfully, and wickedly pretended and represented to the said Cornelius A. Treat; but, on the contrary thereof, the plaintiff avers the truth to be that the rates of freight between such large cities, commercial centers, and manufacturing points to the northwest, southwest, and east from said East Chicago and said city of Chicago were much higher per car-load than the rates of freight between said last-mentioned cities, commercial centers, and manufacturing points and said city of Chicago, to wit, at and after the rate of five dollars per car-load higher than between the said

city of Chicago and said other large cities, commercial cen-
51 ter-, and manufacturing points, of all of which the said defendants then and there well knew.

And the said plaintiff further avers that in and by said false and fraudulent representations so made by said defendants as hereinabove in this count mentioned and set forth to the said Cornelius A. Treat and repeated by the said Cornelius A. Treat to said plaintiff by and with the knowledge of the said defendants the said plaintiff in fact says that it has been largely damnified in this, to wit, that by means thereof it was and became unable to manufacture car wheels at said East Chicago at a profit; that it was necessarily obliged and did, on, to wit, the first day of April, A. D. 1890, shut down and close said car-wheel works and has not operated the same since, and by means of the premises it has lost the value of said car-wheel works and has been deprived of certain great gains and profits which it would otherwise have gained and received from the operation of said car-wheel works and has been otherwise largely injured and damnified at, to wit, the district aforesaid.

Second additional count.

And whereas also before the committing of the grievances
52 by the defendants, as hereinafter mentioned, the said defendant, The Standard Steel and Iron Company, was the owner of a certain other large amount of land, to wit, one thousand acres, situated in the said town of East Chicago, county of Lake and State of Indiana, on which said land the said defendants were endeavoring to build and establish a manufacturing town or city for the purpose of enabling them, said defendants, to sell lots and parcels of said last-mentioned land to divers persons and corporations at enhanced prices therefor; that afterwards and before the committing of the grievances hereinafter named, to wit, on the 11th day of September, A. D. 1888, one Cornelius A. Treat, by the name, style, and description of C. A. Treat, had contracted and agreed with said defendant, The Standard Steel and Iron Company, that he, the said Cornelius A. Treat, would construct or cause to be constructed a certain brick building of sufficient capacity to manufacture two hundred railway-car wheels per day and commence the construction of said building on or before the first day of November, A. D. 1888, upon certain parcels of said last-mentioned lands so owned by said defendant, The Standard Steel and Iron Company, as aforesaid;

in consideration whereof said defendant, The Standard
53 Steel and Iron Company, then and there agreed that, upon the performance of the said agreement by him, the said Cornelius A. Treat, in the matter of constructing or causing to be constructed said last-mentioned brick building, it, the said last-mentioned defendant, would convey to said Treat by warranty deed certain parcels of the said last-mentioned land owned by said defendant, The Standard Steel and Iron Company, and further agreed to give to said Cornelius A. Treat the benefit of any and all contracts for rates of freight which it, the said Standard Steel and Iron Company, then and there had or might thereafter acquire.

And the plaintiff further avers that the said defendants, at and before the making of the said agreement with the said Cornelius A. Treat, to wit, on the day and year and at the district aforesaid, falsely, fraudulently, and deceitfully pretended and represented to the said Cornelius A. Treat that the rates of freight by rail between said town of East Chicago and other points northwest, southwest, and east therefrom were the same rates of freight by rail that were given between said last-mentioned points northwest, southwest, and east of said city of Chicago, in the district aforesaid, and that in
54 case the said Cornelius A. Treat should enter into said last-mentioned contract and build said brick building of sufficient capacity to manufacture two hundred railway-car wheels per day he, the said Cornelius A. Treat, would be enabled to get the benefit on all shipments by rail sent and all goods, wares, merchandise, and commodities by rail received by him to and from said last-mentioned points northwest, southwest, and east and said East Chicago that were given and charged between said city of Chicago and said last-mentioned points northwest, southwest, and east.

And the plaintiff further avers that, the said Cornelius A. Treat not desiring himself personally to carry out the said last-mentioned contract, it was afterwards, to wit, on the day and year last aforesaid, at, to wit, the district aforesaid, agreed by and between the plaintiff, the said Cornelius A. Treat, and the said defendants that it, the said plaintiff, should take the place and stead of him, the said Cornelius A. Treat in the said last-mentioned contract, and that it, the said plaintiff, should construct or cause to be constructed said last-mentioned brick building of sufficient capacity to manufacture two hundred car-wheels per day and commence the construction of said building on or before the first day of Novem-
55 ber, A. D. 1888, in the room and stead of the said Cornelius A. Treat, and on, to wit, the day and year last aforesaid, and before the making of the last-mentioned agreement, at, to wit, the district aforesaid, the said Cornelius A. Treat communicated to the plaintiff that the defendants had at and before the making of the above mentioned contract with him, the said Cornelius A. Treat, represented to him, the said Cornelius A. Treat, that the rates of freight by rail between said town of East Chicago and all points northwest, southwest, and east were the same rates of freight by rail that were given between said last-mentioned points northwest, southwest, and east and said city of Chicago, in the district aforesaid, of all of which said like rates of freight between said city of Chicago and said points northwest, southwest, and east he, the said Cornelius A. Treat, and it, the said plaintiff, in case it should so assume the responsibility in said contract on the part of him, the said Cornelius A. Treat, to be done and performed, would get the benefit and advantage of, of all of which the said defendants at and before the making of the agreement secondly above mentioned had notice, and the said plaintiff, confiding in the said representations so made by the said defendants, then agreed
56 to carry out the first-mentioned contract in the place and stead of the said Cornelius A. Treat and to construct or cause

to be constructed on parcels of said lands of, to wit, one thousand acres in the said town of East Chicago so owned by the said defendants, The Standard Steel and Iron Company, a building of sufficient capacity to manufacture two hundred railway-car wheels per day and commence the construction of the said building on or before the first day of October, 1888, in the room and stead of the said Cornelius A. Treat; and the plaintiff afterwards, to wit, on the day and year last aforesaid, commenced the construction of said brick building of sufficient capacity to manufacture two hundred railway-car wheels per day and continued the construction thereof until, to wit, the third day of June, A. D. 1889, when it had completed the construction of the said brick building with the capacity aforesaid upon said certain parcels of said land, to wit, one thousand acres so owned by said defendant, The Standard Steel and Iron Company, in the town of East Chicago aforesaid, whereas in truth and in fact at the time of the making of such false and fraudulent representations by the said defendant to the said Cornelius A. Treat in this
57 count mentioned and at the time of the communication of the said last-mentioned false and fraudulent representations by the said Cornelius A. Treat to the said plaintiff the rates of freight by rail between the said town of East Chicago and all points northwest, southwest, and east therefrom were much higher and greater rates of freight by rail than were given between said last-mentioned points northwest, southwest, and east and said city of Chicago, in the district aforesaid, to wit, at and after a rate of freight by rail of five dollars per car-load higher and greater, as the said defendants at the time of their making the said false and fraudulent representations, and also at the time of their entering into the last-mentioned agreement, well knew.

And the plaintiff further avers that the said defendants, by means of the premises, on, to wit, the 11th day of September, A. D. 1888, falsely and fraudulently deceived the said plaintiff in assuming and agreeing to carry out the terms and provisions of said first-mentioned contract by and between the said Cornelius A. Treat and the said defendant, The Standard Steel and Iron Company, on the part of him, the said Cornelius A. Treat, and to assume and take the place of him, the said Cornelius A. Treat, in the first-
58 mentioned contract, and thereby the said last-mentioned brick building became and was of no value to the plaintiff, and the plaintiff thereby sustained great trouble and expense, to wit, an expense of sixty-five thousand dollars ($65,000), in and about the construction of said last-mentioned brick building, and the further expense in and about carrying on the business of said car-wheel manufacture in said last-mentioned brick building in said town of East Chicago at a great loss to said plaintiff of, to wit, thirty-five thousand dollars ($35,000), to the damage of the said plaintiff of one hundred thousand dollars ($100,000), and therefore it brings its suit, etc.

COOPER & GURLEY,
Attorneys for Plaintiff.

(Endorsed:) Filed Sept. 29, 1890. Wm. H. Bradley, clerk.

59 Afterward, to wit, on the eighteenth day of October, 1890, came the defendants, by their counsel, and filed in said clerk's office their plea to the additional counts in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States for the Northern District of Illinois.

STANDARD STEEL & IRON COMPANY *et al.*
vs.
C. A. TREAT MANUFACTURING COMPANY.

And the said defendants, as to the first and second additional counts of the said declaration, by Isham, Lincoln & Beale and R. S. Thompson, their attorneys, come and defend the wrong and injury in the said counts and in each of them alleged, when, &c., and say that they are not nor is either of them guilty of the said supposed grievances above in the said additional counts laid to their charge or any or either or any part thereof in manner and form as the said plaintiffs have above thereof complained against them; and of this they put themselves upon the country, &c.

By ISHAM, LINCOLN & BEALE AND
60 R. S. THOMPSON, *Their Attorneys.*

And the said plaintiff doth the like.

COOPER AND GURLEY,
Pff's Att'ys.

(Endorsed:) Filed Oct. 18, 1890. Wm. H. Bradley, clerk.

61 Afterward, to wit, on the first day of December, in the adjourned October term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

C. A. TREAT MANUFACTURING COMPANY *vs.* THE STANDARD STEEL AND IRON COMPANY and JOSEPH T. TORRENCE.	Trespass on the Case.

Now come the parties, by their attorneys, and upon issue joined herein thereupon comes a jury of good and lawful men, to wit, M. L. Earle, Jacob S. Budd, F. S. Weate, Charles R. Potter, L. P. Barnes, W. P. St. Clair, Joseph Hicks, Charles P. Elliott, C. D. Townsend, James F. Shaw, Merrett Platt, and Samuel A. Squire, who were all duly elected, tried, and sworn well and truly to try said issue, and, after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

62 Afterward, to wit, on the second day of December, in the adjourned October term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

C. A. TREAT MANUFACTURING COMPANY
vs.
THE STANDARD STEEL AND IRON COMPANY *et al.*
} Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing the concluding evidence, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

63 Afterward, to wit, on the third day of December, in the adjourned October term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Judgment.

C. A. TREAT MANUFACTURING COMPANY
vs.
THE STANDARD STEEL AND IRON COMPANY and JOSEPH T. TORRENCE.
} Trespass on the Case.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and, after hearing the concluding evidence, the defendants, by their attorney, move the court to instruct the jury to return a verdict for the defendants, and, after hearing the arguments of the counsel, the court sustains said motion and instructs the jury to return a verdict for the defendants, and thereupon the jury returned the following verdict, to wit: We, the jury, find the defendants not guilty. It is thereupon considered and adjudged by the court that said defendants be discharged, and that they go hence without day, and that they have and recover of said plaintiff their costs and charges herein,
64 and that they have execution therefor.

65 On the hearing of said cause the following exceptions were taken and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois, Adjourned October Term, A. D. 1890.

C. A. TREAT MANUFACTURING COMPANY
vs.
STANDARD STEEL AND IRON COMPANY and JOSEPH T. TORRENCE. } Action on the Case for Deceit.

Bill of Exceptions.

Be it remembered that on the trial of the above-entitled cause in the United States circuit court for the northern district of Illinois, before a jury, the Hon. Walter Q. Gresham, circuit judge, presiding, the plaintiff, to maintain the issues on its part, introduced the following testimony:

66 C. A. TREAT, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. COOLEY and testified as follows:

My name is Cornelius A. Treat; was sixty-two years old last April. I am now living at Hannibal, Missouri, where I have lived for about thirty or thirty-five years. I am engaged in the car-wheel and casting business and machine-shop business in the name of the C. A. Treat Manufacturing Company, the plaintiff in this case, which is a corporation; have been engaged in the manufacture of car wheels about 25 years, commencing at Hannibal.

The first I heard of East Chicago was one time in the spring of 1888. In riding from Chicago to Quincy I fell in company with Valentine Surghnor, one of our boys that was raised at Hannibal, and he told me I hadn't ought to be fooling my time away there in Hannibal, and I ought to come to Chicago, and he opened up this East Chicago enterprise as being—he could put me in possession of a good place and cheap freights and everything that was desirable. Within a day or two after that we received a letter from Surghnor first. I haven't got the letter. I think we have searched for it, but we can't find it. We made search through our office, where it should be if it was in existence. The letter had reference to this same matter, about going to East Chicago, and he sent us a map of East Chicago, and went on and stated that he had seen the president, Gen. Torrence, and that he would communicate with us on the subject. I think we got a letter from Gen. Torrence after that.

67 I don't know myself whether or not we have that letter. I came to Chicago the next time about the 1st of July, 1888. I thought after this correspondence with Surghnor and Torrence I would look into the matter one day. I went to see Surghnor, who took me over to Torrence's office in the Rookery building, room 539, and introduced me. We made an appointment to go down to East Chicago the next day and look over the place. Mr. Surghnor

and Gen. Torrence went down with me. When I went up to Torrence's office, the day before I went down to East Chicago, he (Torrence) represented that he would put us onto a tract of land if we would locate in East Chicago; that would be the best kind of location; that we should have the freight rates in and out of East Chicago as represented on that map (referring to map of East Chicago hereinafter introduced in testimony of Frank B. Felt), and freight rates between East Chicago and Chicago in and out of the city proper should be $3 a car, with a switching—a nominal switching—charge to the terminal road which should not amount to over half a dollar a car. He said he was president of the road which did the switching—that was the Calumet Terminal—and then he said as fast as he came to these cross-roads in the construction of his road that he had made arrangements with them that they should switch this outside freight in and out of East Chicago themselves with their own engines over this road—outside freight from the northwest and southwest points — than Chicago. His was a belt road, commencing at Whiting, Indiana, and running around the city, located as shown on the map there (referring to said map introduced in evidence of Frank B. Felt). Whiting is about the
68 lake, coming round here (indicating on said map). He meant when he said as fast as his road crossed these other roads, those roads that come into Chicago. In other words, his was a belt line which intersected those roads. He said he had a contract with the Chicago & Atlantic railroad to carry all freight in and out of the city of Chicago to East Chicago and from East Chicago to the city for $3, and that there would be a half a dollar extra for switching charge or trackage, he called it. He said that contract lasted for 20 years, and that all industries located at East Chicago had the benefit of that contract.

On our trip down to East Chicago the next day Gen. Torrence, Mr. Surghnor, and myself took the cars at the Polk-street depot and went down on the Atlantic road, I think, to the State line, from where we took a hand-car they had there and run up over the Calumet Terminal road to East Chicago; that is Gen. Torrence's road. When we got to East Chicago we looked around the place a little while, and he took us over and showed us a piece of land where he thought was a good location for us to place a car-wheel plant on, and, after looking the place over, on the way down he reiterated this contract he had with the Atlantic road for 20 years a great many times and commented on the extraordinary advantage we would have in going there to that place. Well, he compared it to Pullman; that we would have an advantage over other outside points around the city of Chicago. Well, Pullman had to pay $5 a car, switching; we would have ours for $3.50. Freight rates are a very material point in the manufacture of car wheels at East Chicago, as a man could not live there and meet the excessive
freight rates over and above what a man would pay in the
69 city of Chicago. He has to meet Chicago trade in prices and Chicago prices govern the price to be met all through this line, and whatever a Chicago man prices his wheels at a person

going to East Chicago has got to meet that price, and if he has an excessive freight rate to pay he cannot do it. Such a freight rate as we had to pay down there, $7.50 a car, and from that up to $11, would throw us out of the market; it would make us lose money.

I did nothing definite on that visit to Chicago and went back home. I did not come back again until about the 7th or 8th of September.

My son, James W. Treat, who is interested with me in the C. A. Treat Manufacturing Company, went East in August, taking a trip for pleasure and business combined. He returned to Hannibal about the 1st of September, and I left home, I think, the 7th or 8th; somewhere there. I stopped in Chicago for the purpose of looking over this business more thoroughly. I saw Gen. Torrence in his office and we made an arrangement to go down to East Chicago and look the place over again. We went down as far as Sheffield together, and then he took a team there, with Oliver Forsythe as driver. We went and looked over the location again, and he made the same statement regarding this freight rate as he made in the first place; he reiterated it a half a dozen times in going down there and coming back. After going down and coming back we did nothing more that day. I think the next day I went into his office and this contract which I have read was made and signed. The day we got back from East Chicago I had no arrangement at all, only to close up the contract. It was arranged that I would come in the next day and we would see about the contract. The oral arrangement was that we were to locate at East Chicago with the car wheel plant, and upon the erection of buildings sufficiently large to manufacture 200 car wheels in a day he was to deed us a piece of ground which should be the equivalent of 10 acres. When we got into the office the next day, we located on a piece of ground which was 300 feet wide. I said, "This is not 10 acres." "Well," says he, "I will give you some building lots; you will want some building lots to put your houses on for living; your boys will both of them want to live in houses." Said he, "I will give you those lots in lieu of not having 10 acres in the plat." That is the plat where the manufacturing works were to be. This was talked over both days, and when I told him this piece 300 ft. wide and some 1,140 ft. long was not equivalent to 10 acres, would not make 10 acres, he said he would give me lots to make good the deficiency. This was spoken of both days, the day in the office and the day down there. When I went up there the next day, he had a contract drawn up and he brought it out and showed it to me.

Q. Is this the contract (handing paper to witness)?

A. Yes, sir, it is; if my name is signed to it, yes.

Counsel for plaintiff offered said contract in evidence and it was read to the court and jury. It is as follows:

Memorandum of agreement made and entered into this 11th day of September, A. D. 1888, by and between C. A. Treat, of the first part and the Standard Steel & Iron Company, of the second part,

witnesseth, that the said party of the first part covenants and agrees
in consideration of the premises hereinafter set forth, to con-
71 struct or cause to be constructed, a brick building of sufficient
capacity to manufacture two hundred (200) railway-car wheels per day, and to commence the construction of said building on or before the first day of November, A. D. 1888.

The party of the second part hereby agrees upon the performance of the above undertaking, to deed to the party of the first part by a good and sufficient warranty deed a strip of land three hundred (300) feet wide, along the east side of the railroad right of way, and running parallel with Railroad avenue on the west side of the property deeded to the United States Government for a water-way, twelve hundred to thirteen hundred feet in length from east to west, the center line of said 300-foot strip being the center line of 148th street continued eastward, as now platted and recorded.

The said party of the second part further covenants and agrees to deed to said party of the first part, upon the performance of above undertaking by said party of the first part (2) two building sites of two (2) lots each on their subdivision of the part of the N. W. ¼ of section twenty-nine (29) Lake county, Indiana, the lots to be selected by said party of the first part. The party of the second part also covenants and agrees that upon the performance of the above undertaking by the said party of the first part, to give said party of the first part, the benefit of any and all contracts for rates of freight which they now have or may hereafter acquire.

In witness whereof, the parties hereto have executed and delivered these presents the day and year first above written.

72 C. A. TREAT. [SEAL.]
THE STANDARD STEEL & IRON COMPANY.
[CORPORATE SEAL.] By JOSEPH T. TORRENCE, *President.*

Attest: JAMES S. PRENTISS, *Secretary.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Before me, Marshall Lapham, a notary public within and for the county and State aforesaid, this day personally appeared C. A. Treat, Joseph Torrence, president, and James S. Prentiss, secretary, whose names are subscribed to the foregoing instrument, and severally acknowledged the execution of the same for the purposes therein set forth.

Given under my hand and notarial seal this eleventh day of September, A. D. 1888.

MARSHALL LAPHAM,
Notary Public.

THE COURT: What occurred when he showed you that contract?

A. I read the contract over carefully, and when I came down to the clause where it spoke about that rate of freight I said, "General, this is not according to the talk."

Q. What did he say?

A. Well, says he——

Mr. BEALE: We want to consider all these statements, sub-
73 ject to objection after the explanation of the contract.

Mr. COOPER: When you speak about that clause, state what clause it is: is it this particular clause: "Said party of the second part also covenants and agrees that upon the performance of the above undertaking by said party of the first part"—that is, putting up the building—"to give said party of the first part the benefit of any and all contracts for rates of freight which they now have or may hereafter acquire." Is that the clause?

A. That is the clause.

Q. Now, go on.

A. I said we were to have a $3.50 rate in and out of the city of Chicago. "Well," says he, "the three-and-a-half-dollar rate I have already got for you. I drew it that way so that you should have the benefit of any less rate that I may hereafter get, and I expect to get a rate of a dollar a car to that point, and if I get that rate of a dollar you shall have it."

Q. What did you say to that?

A. I said, "That may be the right kind of an interpretation of it," and I read it over again and kind of made up my mind that that might be a good interpretation of that contract. I signed the contract.

Q. What, if anything, did you say or did he say with reference to the existence of this contract—where it was, this contract with the Chicago & Atlantic railroad?

A. He says to me, "I will show you the contract with the road."

Q. What road?

A. The Atlantic road.

Q. The Chicago & Atlantic?

A. The Chicago & Atlantic. He called to one of the men, I don't know which, "Bring me that contract with the Chicago & Atlantic road." The man shut the door and opened it again, and
74 very demurely said, "General, you left that contract in New York."

Q. What did General Torrence say to that?

A. Said he, "I forgot that:" said he, "We have got the contract."

Q. Then what occurred?

A. Well, we signed the contract and I took my copy of it and started home that night. That is all that occurred that day. The C. A. Treat Manufacturing Company carried out the contract by building these buildings. We commenced the erection of buildings with a capacity of 200 car wheels a day, and had got pretty well along with the foundations by November 22, 1888. I presume our liabilities for the buildings could have been fixed up with probably two or three thousand dollars of expense on November 22, 1888. We had to pay seven dollars and a half a car from the city of Chicago down there on material for building. We got five car-loads of lum-

her down there one time, and I said to him, "General, this is seven dollars and a half a car." Said he, "You didn't ship by the right road, the right way." Said I, "How should I ship?" "Well, you should ship in the name of J. T. Torrence." "Well," said I, "I did ship in the name of J. T. Torrence, and it came as far as Hammond, and they would not send it down until the freight was paid," and I told him that was not our understanding. I had in the meantime seen our contract, looked it over, and I saw that I could not kick. I said, "This is not according to the agreement." Well, we explained it was shipped in his name, and, in fact, his Mr. Prentiss ordered the way it should be shipped. Prentiss was one of his clerks. The cars would not come down there until the freight was paid, and I had to go up to Hammond and pay the freight, which was seven dollars and a half, and then they switched it down. It came over the Chicago and Atlantic. I called Torrence's attention to it,
75 and he said, "Well, I will pay the difference on those five car-loads of freight, between three dollars and a half and seven dollars and a half.

Q. What did he do with reference to paying the difference?

A. He didn't do anything at that time, but he told his clerk to pay us the difference; it ran along, and, in speaking about it next time afterwards, he ordered his clerk to give us credit on a running account that we had with them—with the Standard Steel and Iron Company. I heard him order him to, and his clerk did give us credit on a bill for those five cars; then there was some other items. He gave this clerk an order to give us credit on that bill and the clerk did it. The bill was handed to me again after this credit was put on, and I took the bill to Torrence; there were items on the bill that had not ought to be charged, and I took it back to Torrence and told him about it, and he had the bill in his hands and told the clerk—wanted to know of the clerk why such and such charges had been charged up against us, and then he got his eyes on this credit of the difference between three dollars and a half and seven dollars and a half on those five car-loads of freight that came down there, and he broke out in a torrent of abuse against this clerk for putting that credit on there in that shape; said he, "You would legalize any kind of a thing in the world if I was not here to hold you down." The clerk took the bill to make the corrections with regard to this charge and to wipe out some other charges that was on the bill and I have never seen it since. I never asked for it. I don't recollect who was present when Torrence broke out in this tirade against the clerk for putting this item in the bill besides Torrence,
the clerk, and myself. I don't recollect if there was any one
76 else; it was along during the time we were building our works. I cannot locate the date. I complained to Torrence two or three times that we were not having what he said we could have in regard to freight on lumber and on material. This letter was received by us. (Letter handed witness.) This was sent into our office; it came into our office very soon after we commenced shipping stuff down there. I had made complaints prior to that time personally.

Counsel for plaintiff offered said letter in evidence, and it was introduced and read to the jury and court as follows:

CHICAGO, *November* 22, 1888.

C. A. Treat car-wheel works, 539 Rookery, Chicago.

GENTLEMEN: I have made arrangements to-day with the Michigan Central Railroad Company for all business between East Chicago and Chicago at $3 per car; in addition to this, for the present, there will be a charge of 50 cents per car for trackage, making in all $3.50 per car. Please order all material coming forward consigned to the Michigan Central railroad from Chicago to be delivered at East Chicago on our tracks, and you will have no more bother with your rates of freight.

Please regard this as strictly confidental.

Yours truly, JOSEPH T. TORRENCE, *President.*

After that letter was received we started shipping over the Michigan Central. The rates of freight did not come any cheaper.

77 We paid $5 per car for brick from Pullman down there.

Q. How far is Pullman this side of East Chicago?

A. I should think Pullman was this way considerably over half way down towards East Chicago. Pullman lies between Chicago and East Chicago, and is more than half way from the city of Chicago to East Chicago; all the shipments we made over the Michigan Central were higher than $3.50 and some very much higher. Some of them were $7.50 and some were 22½ cents a hundred. Reckoning 22½ cents a hundred and 10,000 pounds as a car-load, it would make the rate $9 per car. $7.50 was the lowest rate that we got from Chicago over the Michigan Central. I spoke to Gen. Torrence personally after the receipt of this letter about it half a dozen times until we got our buildings pretty well closed up. He always had some excuse. The first excuse he ever offered was in regard to some freight coming by the Atlantic road. He had the excuse then——

The COURT: We are now talking about the Michigan Central. What excuse did he make when you spoke to him about your failure to get the rate mentioned in the letter?

A. I don't recollect that I ever talked to him about any failure to get the freight over the Michigan Central road. I called his attention to the fact that they had been charging us $5 a car from Pullman over there. He says, "You can't get those roads to do what they agree to." Practically we got the buildings completed and ready to go into operation about the 1st of June, 1889. The building has a capacity to manufacture 200 car wheels a day easily; it has the capacity; it is big enough to be arranged so that 400 can be manufactured in it by crowding. We never put the machinery into the building to manufacture over 100 a day. Our capacity

78 was 100 a day with the machinery we had there; the capacity of the building itself and most of the machinery is large enough to manufacture 200 a day and do it easy. We were ready to operate along in June, as I said, but we did not operate until in September. I obtained deeds from the Standard Steel and Iron Com-

pany under this contract for eight and some odd hundredths acres and two building lots.

Q. Are these the deeds (handing papers to witness)?

A. Yes, sir.

Counsel for plaintiff offered in evidence said two deeds, one for the car-wheel works, being dated January 16th, 1889, and the other for the building lots, dated June 3rd, 1889, and said deeds were introduced in evidence, and by stipulation of counsel for brevity the following is to be considered as these contents. Said deeds were in substance respectively duly executed, one acknowledged Jan'y 18, 1889, and filed for record Jan'y 22, 1889, conveying the land on which plaintiff's car-wheel works at East Chicago were built, and the other acknowledged June 6th, 1889, and filed for record June 7th, 1889, conveying what are known in the record as the four building lots or residence lots in East Chicago, and each deed being executed by the Standard Steel Company as grantor to the plaintiff as grantee.

Q. What did you do, Mr. Treat, when you got the works into operation? Did you go on and manufacture car wheels?

A. We commenced and manufactured car wheels. We manufactured some five or six thousand car wheels there. When
79 that building was up, completed, ready for operation, with the machinery in it, as it stood, say, in the month of September, 1889, with a rate of freight secured for twenty years by contract over the Chicago and Calumet Terminal and over the Chicago and Atlantic of $3.50 per car to and from Chicago and East Chicago—per car-load—and with the same rate of freight from East Chicago to all points northwest, southwest, and east as from the city of Chicago to those points, that plant, thus erected, was worth, in my estimation, $100,000. I base my estimate of the value of that plant in that I could make it pay interest on $100,000 over and above all expenses or liabilities. In constructing the works at East Chicago we paid out, in round numbers, about fifty-three (53) or fifty-four thousand (54,000) dollars. I think that work was economically done. I have had very large experience in constructing buildings, works of that kind, and railroad buildings. I was superintendent of the United States custom-house and post-office and court-house building at Hannibal from the time of its commencement to its completion. I consider myself competent to state about whether that work was proper and economically done. We had a man who was foreman of the building, and I superintended it myself. During the time the building was going up I was there pretty near constantly—I would say three-quarters of the time, any way—from the 1st of November until about the 1st of June.

Mr. Cooper:

Q. What would the services performed by your sons and yourself in the matter of constructing or superintending that building during its construction and also during the time when the ma-

chinery was being put in there be worth? What would be a fair price for such services?

80 A. I considered my services would be worth, well, $6,000 a year. I was there three-fourths of the time during that time. We got the machinery in—we commenced putting the machinery in along in the latter part of January, and we kept at work on it until about the 1st of June, 1889. I think we closed down in April or May, the latter part of April or the 1st of May, 1890. We closed the works down because we were not making any money on account of having so much freight to pay. On our material after we started work, the material we got from Chicago and the product of our works that we sent to Chicago, we had to pay 24 cents per hundred pounds, and, according to the number of hundredweight in the car and according to the car-loads as they run it, it would be from seven and a half to eleven and a half dollars a car.

Q. That is, cars run from 25,000 pounds up to 40,000 pounds?

A. They have got 60,000-pound cars now. The sole reason why we closed down were the rates of freight; that is the only reason we had for closing down. We refused an order for 5,000 wheels two or three days before we closed down on account of the rates of freight. We got the iron from various points. We get iron from north up here and northwest of here—Lake Superior iron. We failed to make money there solely on account of this rate that we had to pay—anywhere from seven or seven and a half to nine or ten dollars a car. We could have lived and made a fair profit at the three-and-a-half-dollar rate in and out of Chicago. We would lose money at seven and a half dollars a car.

81 Cross-examination by Mr. THOMPSON:

After a conference that I had with the gentleman that I met on the train in May, 1888, I received a letter from that gentleman enclosing a map after my return to Hannibal. Subsequently I received a letter before I came to Chicago from Gen. Torrence which I have lost. I think we received a letter from Gen. Torrence right away after receiving the one from Sturgiuor. I know that we received two or three letters from Gen. Torrence before we got through with the business, and I am pretty certain that we received that letter at that time from General Torrence. I understood General Torrence to be the president of the Standard Steel and Iron Company and the president of the Calumet Terminal Railway Company and the president of the Calumet Canal and Improvement Company. I understood he was acting in that capacity during this negotiation, acting as president of all those three companies. The Calumet Improvement Company had nothing to do with this. I was not treating with him in his capacity as president of that company. The Calumet Terminal Railroad Company did not make any charge for switching until about the time we commenced operations; then they got engines of their own onto the road and went to charging for switching from a dollar and a half to three dollars a car for switching.

Q. There was a switching charge which you say you understood *you* was 50 cents? That was a switching charge from where the branch line went from East Chicago up to the intersection of the Atlantic road, was it not?

A. Gen. Torrence represented that charge would be a trackage charge, not a switching charge—a trackage charge. There wasn't any trackage charge. We never had any charge for track-
82 age. These roads did bring material to us until the Calumet Terminal Railroad Company drove them off. That was along in the summer of 1890.

Mr. COOPER: Not 1890—1889.

A. We commenced manufacturing in September, 1889. We never were charged for any trackage. We never had a charge presented to us for trackage or switching but once, and then they charged us 82 for switching a car from—one si-gle car. They charged us 82 for switching the car around, and I demurred against it. That was the only switching we were ever charged with. When I came back to Chicago in July I never talked with anybody else except Surghnor and Torrence. Those are the only two persons I ever talked to about it. I did not go to any railroad companies to inquire whether any such rate could be made. I never had a conversation with John B. Carson about this matter nor about freight rates. He was the vice-president and general manager of the Louisville & New Albany road. I had a talk with him prior to the location there and about locating there, and he advised me not to go there. I didn't talk with him about freights, and he didn't talk with me about switching *c*harges. There was nothing said about freights or switching to John B. Carson. I talked about going there, and I asked him if I went there would he give me a part of his business, the business of the railroad company. I had no talk with him with reference to freight at that time. I took his advice to mean that he advised me not to go there. He says, says he, "We cannot give you any of our business, Mr. Treat, for the reason we have got four or five car-wheel plants located on our line already, and we must patronize them, as they patronize us." That conversation all took place before there was any contract signed or anything of that kind. Car-
83 son gave me no reason why I had better not go there other than I have mentioned. I made no inquiry outside of talking to Gen. Torrence and this gentleman I met on the cars—Surghnor—with reference to the rates of freight between Chicago and East Chicago. I understood that Gen. Torrence was acting on behalf of the Standard Steel and Iron Company; that I understood not a great while prior to the signing of the contract. The talk prior to the execution of the contract and the day we went down there was for ten acres, but when we went down there that day there was a tract of ground there that was just 300 feet wide, and that was the piece of ground we were to locate upon. That day was the day before the contract was signed. Up to that time—the day before the contract was signed—the talk had been about giving us ten acres of ground on the condition I would locate these works

there and construct a building as it was represented in the contract. The last day we visited prior to the signing of the contract was the day we picked out and located the ground. I called his attention to the fact on the ground that that did not contain ten acres. I spoke of it in a casual way—in that way during the trip around. I cannot say whether it was on that ground; it was during the day I called his attention to it that it did not contain ten acres, and then he stated he would give me the additional four lots. He stated to me that the company would deed, in addition to this piece, four lots. When I came up into Gen. Torrence's office the next day I don't recollect who was present, who was in his office, the day the contract was signed. As far as I recollect Gen. Torrence was there and perhaps old Mr. Forsythe was in and out; I could not tell; there were two or three parties in and out during the time
84 we were talking about that matter; I could not tell who they were; I know Mr. Forsythe was in and out. Mr. Prentiss was one of the clerks; he might have been in and out a half a dozen times, for that matter; I don't know. I know a man by the name of Lapham; I believe that is the name of the one he calls Marshall. I don't think he was in the room while that contract was signed; I don't know, but he may have been.

The first freight we sent to East Chicago was brick from Pullman. The rate charged on the first lot that came down there was 83; they came down in September, 1888. I want to explain a little further about that charge. Those cars on which we paid freight at the rate of 83 came in to us with another bill, raising it to 85. We paid that bill. In paying the second bill we paid 85. It was some months afterward before they came in with that bill. That was the first shipment of brick; we didn't get any more brick there until December. The next brick came in by way of the Michigan Central road and the cost was five dollars a car. That was along in December. We got freight from Pullman that cost us over three and a half dollars a car by way of the Michigan Central road. We got freight by way of the Atlantic road about the time, in November. Along in November we got freight by the Chicago & Atlantic, over the Chicago and Atlantic, sent to us down there, and it cost us seven and a half dollars a car on lumber. I could not say what time in November that was. From September to November we didn't do any freighting. The brick was sent there and they were switched in. We did not freight any lumber in until in November; nothing else, but this brick. We never received freight over the Michigan Central at three dollars a car; never
85 a pound that I know of. The fifty-three or fifty-four thousand dollars paid out included our machinery. I have not the exact divisions as to what the building itself cost; generally some thirty-one or thirty-two thousand dollars. My recollection is that the buildings proper cost in the neighborhood of thirty, thirty-two, or thirty-five thousand dollars, and the balance—the machinery proper in there—cost about twenty-one thousand dollars. This machinery includes the fixtures, movable and immovable. The building does not include the cupolas nor the fixtures. Includ-

ing the cupolas, the buildings cost about $53,000. The whole business cost that. The machinery proper, as we divided it, cost about $21,000—that is, the machinery and fixtures; what we call machinery. The cupola is part of the machinery.

After we started the business and got to work there I talked with Mr. Crane, the freight agent of the Chicago & Atlantic. It was not until after we started to manufacture. I have a slight acquaintance with Robert E. Todd. I don't recollect that he was present at the time this contract*ed* was dictated and signed by me and General Torrence. I did not learn the charges of freight between Chicago and East Chicago prior to the commencement of the erection of the building. I supposed General Torrence had what he said he had—a 83 rate. I made no inquiry of any road leading there or of any one else.

Redirect examination.

By Mr. COOPER:

I happened to go to John B. Carson because I was acquainted with him, and I called in there in a casual way. He was general manager of the Hannibal & St. Joseph railroad a good while
86 at Hannibal, and I became acquainted with him while he was such, as he patronized our shop at Hannibal. We had experience with railroads and shipping all the time, as we were constantly dealing with them. I had a general knowledge of freights and their effect on business.

Recross-examination.

By Mr. BEALE:

Coming to Chicago in July, 1888, when I went to Mr. Surghnor's office, it was in the Tribune building on Madison street, near the corner of Madison and Dearborn, several blocks from the Rookery building. When General Torrence complained to his clerk or whoever drew the bill about the credit of $20 I have spoken of, he said, "You would legalize any kind of a proposition, no matter what, if I didn't watch you." I don't say what time it was. I could not say as to the exact time. It was after the first shipment of lumber, but at the first interview in regard to that rate this three-and-a-half-dollar rate was talked of, and he said, "We will pay you the difference;" but at the time this conversation came up about his legalizing this business, this was along two or three months after that—two or three months later. At that time we had got pretty well built up. We had an office in Chicago, at room 539 Rookery building. I think Torrence's rooms came down *our* next to our partition. I learned of this charge of seven dollars and a half a car on lumber in November, and I spoke to him several times. He promised to make the credit the first time—the second time, when we spoke about it, when I took the bill to have him wipe out the charges that they had got billed against me, and among the rest was this carload of switching—this one car of switching that I spoke about in

my testimony. We have not settled that account with the Standard Iron & Steel Company.

87 I know that bill had a credit on it of this that I speak of, and I know that I have not seen that bill since this tirade that took place between him and his clerk. I don't know anything about the books of the Standard Steel & Iron Company. I do not know any objection being stated to the allowance of that credit on that particular bill. I think he had reference to the language used in putting the credit on the bill rather than the amount of money itself.

JAMES W. TREAT, called as a witness on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is James W. Treat; I reside in Chicago; I am secretary and treasurer of The C. A. Treat Manufacturing Company, the plaintiff in this case. I have occupied that position about five years, since its formation. The business of the C. A. Treat Manufacturing Company is car wheels, castings, and machine-shop work; have been in that business, the manufacture of car wheels, and connected with such business all my life, twenty years, since I went to work. The principal factory of this plaintiff was located at Hannibal, Missouri. I first learned of East Chicago as a point of location after my father returned from a trip to Chicago (my father was on the witness stand this morning); that was some time in the month of May, 1888. In August, 1889, I visited the East, and there saw people connected with the Standard Steel & Iron Company, Col. McCook, one of the firm, I think, of Alexander & Green. I understood he was general counsel of the Standard Steel & Iron

88 Company and interested with them as a stockholder. I had a conversation with him in his office, in the Equitable building, in the city of New York. He said, "I understand you are going to East Chicago to locate." I told him no; we had not decided to go to East Chicago. He said he understood we had. I told him we had not. He said he hoped we would go there, and in the conversation, which was casual, said he would like to have us locate there. I told him we had opened some negotiations with it, but had not decided fully to go there yet. He says, "Whatever representations General Torrence makes they would see that they were carried out." I suppose he meant by "they would see" Alexander & Green. I came from New York to Hannibal, stopping at Chicago. J. J. McCook was the only one connected with the Standard Steel & Iron Company I saw and had any conversation with during that visit in New York. I stopped at Chicago on my way home to Hannibal, and during my stay in Chicago at that time I saw Joseph T. Torrence in his office in the Rookery building; that was about the 1st of September or the last of August, 1888. I had a conversation with Gen. Torrence at that time. I told him I had seen Col. McCook in New York, and he said he hoped we would go there, and in our conversation he said, "It is the best thing in the world for you to do; we have given you the best lay-out—offered

you the best lay-out of any place around the city." I told him I had talked with my father. "As I understand, you have got a 83 rate between Chicago and East Chicago." "Yes," said he, "we have got a 83 rate, and that rate runs twenty years." Said I, "I understand you will put cars in and out of there over different roads—these different roads—free." He said, "Yes; that is the arrangement;" that he would put the cars
89 in and out, I understood, into our works free from all these different roads connecting with the city—that is, over the Chicago & Calumet Terminal, I mean. He said that twenty-year contract existed with the Chicago & Atlantic railroad, and he said all the other roads would come to it. He said the freight rates to other points other than Chicago from East Chicago and from such points to East Chicago were the same as from Chicago. That was about the substance of the conversation. I then went to Hannibal and I there related to my father what General Torrence had stated to me. I also repeated to him what Gen. McCook had told me. My father then came to Chicago, as he has testified. I came to Chicago, I think it was in November, 1888. The construction of our building at East Chicago was commenced in September. We established the office in the Rookery building in January, 1889. I first saw freight bills on material for our building—I think it was two months after that—after November. The first freight bill I saw was on some lumber that came from the city down there over the Chicago & Atlantic. The rate of freight charged was seven and a half dollars a car. When I saw those bills that was the first time I had any knowledge that a greater rate of freight was charged than three dollars a car. Those first bills my father spoke to General Torrence about. I mentioned that to General Torrence just after I heard of it, in the spring of 1889. He said it was a mistake; he was going to rectify it. Nothing else occurred at that time. I saw him at different times, quite frequently, with reference to freight rates. For a time he maintained that it was a mistake in the billing; that it was made by the clerks of the railroads. Later on he said that they, the railroad, would not recognize his contract—the
90 Chicago & Atlantic. He first told me the Chicago & Atlantic would not recognize this contract at the time it went into the hands of a receiver. I think that was in May, 1889, the receiver would not recognize his contract. I had a conversation with him with reference to the Michigan Central; that was also about the early part of 1889. There had been some freight in there at seven and a half dollars a car. I spoke to him about it and he said it was a mistake. This came over the Michigan Central, and he said it was a mistake about the rate and he would see it was rectified. He said, "Now, if you will come right over with me, I will see that they fix it up satisfactorily." I went over with him to the general office of the Michigan Central road. When we got to the office he told me to stand in the outside room while he went into the general office. In a little while he came out and said it was all right. Said he, "You will have no further trouble." I went away supposing it was all right. The next freight came at seven dollars

and a half a car. We got freight over the Michigan Central after that interview down at the office at the rate of seven dollars and a half a car. There were other occasions on which I saw Gen. Torrence and had conversations about rates. General Torrence stated when he came to me again in the outer office of the Michigan Central railroad that he had had a talk in the inner office with Mr. McKay, the freight agent of the Michigan Central. I saw Mr. Crane, of the Chicago & Atlantic, with reference to freight rates before we were built, fully completed, ready for operation. Mr. Crane said before General Torrence that he would not put any material down there for less than tariff rates. The tariff rate was 2½ cents per hundred pounds, or seven and a half dollars a car; not less than that; ranging from that to the full capacity of the car, which would
91 run it from seven dollars and a half to eleven dollars and a half and twelve dollars a car. It depends altogether on what is in it. We were ready for operation in August, 1889. We did not commence until after that—a couple of months.

We then commenced operations. We manufactured car wheels there. At the time we were running we made six thousand wheels. Upon the product that we produced there we had to pay two and a half cents a hundred, on that basis, on all material in from the city of Chicago, and it depended on where it went out of there what we had to pay. It would range from nothing to $3 a car out in some directions, and in other directions it would range two and a half cents a hundred pounds, points other than Chicago. When we would give a shipment to a road running east that connected with the Chicago & Calumet Terminal railroad they would take the product from our works free, the same as they would from the city of Chicago, but, when we sent a product away by another road, if it was not connected with the Chicago Terminal railroad they would charge two and a half cents a hundred to points in the northwest and to the west where these roads would not connect—the two and a half cent rate in from East Chicago to Chicago.

Cross-examination.

By Mr. THOMPSON:

This conversation that I had in New York with J. J. McCook was prior to the consummation of the contract. I was introduced to him by a young man by the name of Colby. It was a matter altogether different from this—not connected with our going to East Chicago at all—but in the conversation this came up incidentally.

From this conversation I judged he was connected with
92 the defendant in this case, the Standard Steel & Iron Company. I didn't know, only from what he said. As I understand it, his connection was with Alexander & Green. I had a conversation with Mr. Crane, of the Chicago & Atlantic, in which he told me that they would charge the regular rate of freight. That was in the spring of 1889. I think it was probably in April or May before the receiver was appointed. I had no conversation with

any one else with reference to freight rates prior to the signing of the contract other than General Torrence. I made no inquiry. I do not remember the exact day when I went to the Michigan Central railroad office with Gen. Torrence. It was early in the spring of 1889. I could not say exactly whether it was April or not. The first intimation that I had that these freight rates were to be higher or likely to be higher than three dollars and a half was lumber bills rendered by the Chicago & Atlantic road. It was the first lumber bills that we got down there. I could not swear just to the date of the first shipment of lumber. I don't remember whether there was lumber or not on the ground prior to our going there in November. I don't remember of there being any lumber there on my first visit. I can locate the month when we first got lumber at that place by the bills. I cannot locate it as I am now. The bills will show exactly when the lumber was delivered. It was two months after the lumber was delivered before I saw the bills; I should judge about that time, as near as I can recollect. It was quite a little time after being at the Michigan Central railroad before the next freight bill from that road came in at $7.50 a car. I mean it was a number of days—two or three weeks, perhaps, or a month—fully a month
93 after. I know it was over a week. It may have been a month or a month and a half or two months. It was some time afterwards. I did not see Mr. McKay at that time. I did see such a man. The conversation was early in the spring of 1889. When I saw Mr. McKay it was after our corporation had received a letter from Gen. Torrence stating that he had made an agreement with the Michigan Central. It must have been two or three months after, as it was in the spring, and the letter came there, as I saw it, in November, about that time. This was two or three months after the letter was received. I don't think Mr. McKay came out of his private office and spoke to me at the — when I went there. I don't remember that he did. Col. McCook did not say to me when I saw him in New York that he was interested in the Standard Steel & Iron Company, but he was interested in East Chicago. He did not specify whether it was the land company or the railroad company.

Redirect examination.

By Mr. COOPER:

He said he was interested with General Torrence in the East Chicago enterprise.

Sometimes we would get the bills before the lumber was received and sometimes afterwards—perhaps a week, ten days, two weeks, and probably not until the last of the month.

94 VALENTINE H. SURGHNOR, called as a witness on behalf of plaintiff, being duly sworn, was examined — chief by Mr. COOPER and testified as follows:

My name is Valentine H. Surghnor. I am a real-estate broker; am forty-four years old the 28th day of next February. I live in Chicago and have lived here off and on since 1875. I have lived

here continuously since 1881, November. I lived in Hannibal a good many years, where I became acquainted with C. A. Treat, the president of the plaintiff corporation here. I have known Mr. Treat, I think, for twenty-odd years; probably twenty-five. I know him very well. I have an acquaintance with Mr. Torrence; have known him since the summer of 1887. I had some business with Gen. Torrence in the summer of 1887 in connection with some other parties here, M. E. Bell, J. Lewis Pfau, John W. Marsh, and afterwards Mr. M. M. Smith, of Pittsburgh, Pennsylvania. The business was about the organization of a rolling-mill at East Chicago under the laws of this State. The matter did not go through. I could not say that I was employed directly by Gen. Torrence to get parties to locate at East Chicago. In a conversation with Mr. Treat I suggested to him that as a broker I thought I could locate him on five or ten acres of ground. Afterwards I acted at the instance of Torrence. At that time Torrence had not employed me to do that. I was doing that in anticipation of a possible employment by Torrence. I had a conversation with Mr. Treat on the cars on a C., B. & Q. train going out in the spring of 1888, when he was going home. I called at Gen. Torrence's office in the Rookery building and told him of the conversation I had had with Mr. Treat,
95 which has been brought out here. He was very anxious to have me get the C. A. Treat Manufacturing Company to locate on the land at East Chicago. He instructed a young man there—Marshall, he called him; I don't know whether that is his surname or not—to furnish me with plats and any information I wanted for the purpose of selling it to the C. A. Treat Manufacturing Company. The Gen. was just in the act of leaving the office, and he told me if Marshall did not furnish me the information to let him know and he would do so. Marshall gave me some plats which, I being somewhat familiar with East Chicago, I forwarded to the C. A. Treat Manufacturing Company and wrote them a letter to the effect that I had seen Gen. Torrence and had opened up the question of a site for his car-wheel works, and that if he would look over the plat he would ascertain what the proximity to Chicago was and what the facilities were for shipping, and from former conversations I had with Gen. Torrence I also called his attention to the fact that the rates were very low, as I —. The former conversation with Gen. Torrence was under this rolling-mill matter. I have stated all I know about the conversation I had with Gen. Torrence at that time. Gen. Torrence at that time made no further proposition or offer as to a commission in case I brought the C. A. Treat Manufacturing Company there than he told me he would make it to my interest if I could influence them to go there and pay me a handsome commission. Gen. Torrence called at my office in the Tribune building on one occasion soon after this to know if I had heard anything from the Treat Manufacturing Company. Then I met him on the cable car down Cottage Grove avenue one morning, and we talked about the matter. He was very solicitous that I should get the Treat
96 Manufacturing Company at his place. Up to that time he did not state anything about what the rates of freight were.

I next saw Mr. treat after I met him on the C., B. & Q. train—I think in the latter part of June or the 1st of July following this he called on me at my office. After that conversation with Mr. Treat in my office we went over to Gen. Torrence's office, in the Rookery. I met Gen. Torrence there in his private office; there was no one else; there were several clerks in the outer office. We were admitted to the inner sanctum. I don't know that I could state exactly what the conversation was; the substance of it, however, was that General Torrence was very anxious to have the C. A. Treat M'f'g Company located at East Chicago. He told him he would give him whatever necessary land they would need; five to ten acres of land was what they talked of; it was a question whether it should be five or ten, but that was the amount talked of, and he said it was one of the best points in the city for shipping, or near the city. This was Gen. Torrence's statement to Mr. Treat, and they were going to have a great water outlet to the Mississippi river; they would be connected with all the railroads in the city, giving low rates of freight, and the facilities in connection with the railroads, and also with the lake freight, would be unexcelled for manufacturing purposes in Cook county or anywhere else. The General, I will state, is very capable of putting the thing very strongly. There was no definite statement made with reference to freight rates at that time; none that I remember of. We parted company there with the understanding that Gen. Torrence, Mr. Treat, and myself were to go to East Chicago the next morning on the 4.45 or 5.45 train; it was very early, I know. Mr. Treat
97 was to leave the Polk-street depot on the Chicago & Atlantic train, and General Torrence and I were to meet him there, at the 39th-street crossing. We did, and went down to East Chicago on that early train. We went all over the ground there—that is, that portion of it that was laid out for East Chicago. General Torrence stated on our way down on the cars—pointing out the various manufacturing plants, and so forth—he could make a freight rate from East Chicago to Chicago and connecting roads for $3 a car. He spoke of that a number of times; also that he had a contract himself for that purpose, and he could give any plant locating at East Chicago that $3 rate. I don't remember that he said what railroad company it was with whom he had this contract; he had a contract.

Q. Did he state how long that contract continued?

A. If I remember correctly, he stated that the contract continued for twenty years; what the date was I could not say. As to what I heard General Torrence say about rates of freight between East Chicago and other points other than Chicago, as compared with the rates from Chicago to those other points outside of Chicago, the rates would be the same as those from Chicago. He made that statement.

Q. I want to charge your mind particularly whether or not there was anything said by General Torrence about a contract which he had to take freight from Hammond or North Hammond for the twenty years.

A. I didn't hear of any such contract.
Q. Are you sure that it was East Chicago?
A. I know it was East Chicago.

Cross-examination by Mr. BEALE:

As to the favorable or unfavorable character of this promised contract rate, as to whether it was — good or bad rate, it was
98 spoken of as being a very good rate and one of the chief features of the company. It was spoken of as being a very favorable rate to East Chicago. It was spoken of as being something a little better than a great many other points had, a special rate. I do not think it was said that either one, The Standard Steel & Iron Company or — General Torrence spoke of the matter in a general way; didn't emphasize that the company had it, or that he, Torrence, had it. He said, "We have it." I had occasion previously to know something about such a contract. In my connection with the East Chicago Rolling Mill Company, when we organized that company, that was discussed at that time. I did not at any time see a copy of a written contract or an original contract in writing which General Torrence had with the Chicago & Atlantic Railway Company. I never saw that. I think possibly Mr. Bell or John W. Marsh may have seen it. I heard them speak of a contract that they had seen. I did not at that time myself know what the regular rates were commonly obtained for freight traffic between Chicago and East Chicago. I was associated with Mr. Bell and Mr. Marsh when they organized that company. I had no arrangement with Mr. Treat looking to the payment of any compensation from him to me for my services. I am a real-estate man. I mean a man who buys and sells real estate on commission or for his own gain, either as a broker or dealer in it individually. The main part of my work is bringing purchaser and seller together. I was paid a commission of $125 by General Torrence. We had a little controversy over it. I asked a thousand dollars, if I remember correctly. I felt justified in asking the amount of money from what he had
99 promised and what he had said that he would give me if I located the C. A. Treat Manufacturing Company there. There was no ill feeling developed on my part on account of that difference. The reason the General gave that he would not pay any more than $125 instead of the $1,000 was that he could hire all the men he wanted; could procure that kind of men for $100 to $125 to do the work I did. He could not get me to do it now for five.

MILO S. HASCALL, a witness called on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. COOPER and testified as follows:

My name is Milo S. Hascall; my age is 61, and my business is hard-wood lumber, and real estate, one thing and another. I reside at present in this city. I have a connection with a gentleman by the name of Irwin living at Goshen, Indiana, in the hard-wood

lumber business at East Chicago, Indiana. I think we made the purchase in the summer or fall of 1888. The name of the concern was John H. Lesh & Company at that time. I know Joseph T. Torrence. I never saw him until about the time we were negotiating for that property and I saw him probably a dozen times. When we were negotiating with him, the firm of John H. Lesh & Co., it was the purpose of establishing a plant there. The first I knew of it Mr. Lesh informed me. He was in Chicago most of the time and had been examining different points with a view of locating mills, and he finally about reached the conclusion to locate there, or, at all events, he wanted I should come up and go with him to look at that place. It was at Mr. Lesh's suggestion that I came to Chicago for that purpose. I had been living in Indiana. At
100 that time when I came up and made this examination of the place I saw Joseph Torrence at his office in the Rookery and we went out there together.

(Further examination of this witness postponed.)

JOSIAH D. KERSHAW, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is Josiah D. Kershaw. I am now the auditor for the receiver of the Chicago & Atlantic railway. I reside in Chicago. That road went into the hands of a receiver on the 18th of May, 1889. I was connected with it prior to its going into the hands of a receiver, ever since the commencement and opening of the road in 1883, for a year as chief clerk of the accounting department, and since 1884 as auditor. As auditor of the Chicago & Atlantic I was advised of all rates of freight given on the different points of that line. There is a contract with the Standard Steel & Iron Company and the Chicago & Atlantic Railway Company with reference to a freight rate to East Chicago.

Q. Was there in the year 1888?

A. I think the contract is dated in February or March, 1887. We call it the Toll contract or the Distillery switch. (Witness produces copy of contract.) That is the contract or a copy of it that I refer to—the Chicago Steel Manufacturing Company, Mr. Toll, and the city of Hammond. This is the contract which I have reference to, which we call the Toll switch or the Distillery switch. That is not a contract for rates to East Chicago. There was not to my
101 knowledge any contract in 1889 or 1888, at any time, commencing with the first of September, 1888, and ending — the appointment of a receiver in May, 1889. If there had been such a contract I should have a copy of it in my possession.

By stipulation said contract was offered in evidence and is as follows:

This agreement made this 15th day of February, A. D. 1887 between the Chicago Steel Manufacturing Company and Marcus M. Towle of the city of Hammond, in the county of Lake, and State of Indiana, also James N. Young of Washington heights, county

of Cook and State of Illinois, and Joseph T. Torrence, of the city of Chicago and State of Illinois, parties of the first part, and the Chicago & Atlantic Railway Company, party of the second part.

Witnesseth, that, whereas, the parties of the first part owning and controlling certain manufacturing industries in Hoffman's addition to the city of Hammond, have acquired rights to lay, maintain and operate railway tracks on and along River street in said city, including the rights to extend the so-called M. M. Towle Distillery track to the grounds of the Chicago Steel Manufacturing Company, as appears upon map hereto annexed.

And, whereas, said parties or some of them, control or own the said Distillery track to its present connection with the road of the second party, and have the right to grant the use thereof to others.

Now, in consideration of the premises, the parties of the first part hereby grant to the second party the right to construct an extension of said Distillery track from its present easterly terminus, about five hundred feet to the westerly line of the grounds
102 of the Chicago Steel Manufacturing Company, there connecting with the tracks of said company upon its own grounds.

The parties of the first part will furnish all necessary rights of way for such extension and put the second party in immediate possession thereof for the purposes aforesaid.

The parties of the first part further grant to the second party the right to use jointly and equally with said first parties the said Distillery track completed and extended as above as well as any and other tracks hereafter owned or controlled by them or either of them leading to, or connecting with their works in said city of Hammond, free of charge or expenses, and will at all times keep and maintain all such tracks in good order and condition for the passage of cars and engines thereover.

The parties of the second part agree—

That they will at once proceed to construct and complete as soon as practicable the extension of said Distillery track to a connection with the tracks upon the grounds of the Chicago Steel Manufacturing Company upon and along the right of way furnished as aforesaid and as shown upon the map attached.

That they will in like manner lay upon the grounds of said Chicago Steel Company, one thousand feet of single track, to be located by the said company and the engineer of the second part with a view to accommodate the business of said company: Provided, however, that in the event said second party does not find the laying of said track profitable, it may, after the expiration of two years from this date take up and remove said track
103 unless said company shall elect to purchase the same at its actual cost. Such removal or purchase shall not impair or effect in any way the remaining provisions of this contract.

That they will transfer cars for all and each of the first parties, and for any industries in which they or either of them may be interested, to and from their works at Hammond, situate upon the tracks aforesaid at the following rates:

First. To and from Chicago at three dollars per car, car of

twenty gross tons and no charge on empties, when they have been loaded one way.

Second. To and from the Chicago & Rock Island junction at Stony island and to and from the Illinois Central junction near Stony island at one dollar and a half per car of twenty gross tons and no charge on empties, when loaded one way.

The party of the second part shall have the right to use all tracks of the Chicago Steel Manufacturing Company now or hereafter laid upon the grounds of said company, jointly and equally with said company and other railroads entering the same.

No use of the Distillery track and extension shall be granted to any railroad competing with the second party, except and only upon the condition that the said second party shall be granted by such other railroad the like privilege of using its tracks, now or hereafter, connecting with or leading to the works of said first parties or any of them.

That parties of the first part will procure such additional
104 ordinances or grants from the city of Hammond as may be found necessary to enable the second party to lay down or use any of the railroad tracks contemplated in this contract.

This agreement shall continue until the 15th day of February, in the year nineteen hundred and seven (1907) whereupon the party of the second part may take up and remove the tracks laid by it hereunder, unless the first parties shall elect to purchase and shall pay for the same, the actual cost thereof.

In witness whereof, the parties have executed these presents the day and year first above written.

CHICAGO STEEL MANUFACTURING COMPANY,

(Signed) By "JOSEPH T. TORRENCE,"
Vice-President & Gen'l Manager.

"JAMES N. YOUNG."

"MARCUS M. TOWLE."

"JOSEPH T. TORRENCE."

CHICAGO & ATLANTIC RAILWAY COMPANY,

(Signed) By "JAMES H. BENEDICT," *President.*

As auditor, I was furnished with all the rates that were given on that road. I was never furnished with a rate of $3.50 or $3.00 to the East Chicago connection. The regular rate from the 1st of September, 1888, until the road went into the hands of a receiver was $7.50 a car. After the appointment of a receiver I have no knowledge of Gen. Torrence trying to obtain a contract with the receiver to East Chicago of my own knowledge.

105 Cross-examination by Mr. Beale:

As this copy of contract reads in the beginning, that is the copy of the contract I had. I couldn't remember everything that is in my copy. The rate was a three-dollar rate from Chicago, if I recol-

lect right, in this contract. I don't know how far Hammond is from East Chicago. I don't know anything about the locality down there. I have heard it is about three-quarters of a mile, I believe. So far as the individuals in that contract were concerned this contract was lived up to to the time of the appointment of a receiver. Since the receiver has been appointed it has been in force. It was not repudiated by the receiver upon the ground that he was not bound by it; if so I would have known it. It is hard to remember whether or not since the appointment of a receiver there have been any freights in and out of Hammond to those parties there or from those parties there under the terms of that contract. I can tell from my books. I will examine my books and come back and let you know. I don't know of any contract which was made between the Standard Steel & Iron Company or its officers and the Chicago & Atlantic road for such a special rate as this to East Chicago. The same rate was given as under this contract to East Chicago, but not to my knowledge. These vouchers are a 83 rate. They are expense bills—that is, freight-rate bills from the Chicago & Atlantic road to D. Multnitz. The others are Torrence, State Line, Chicago & Calumet Terminal, *Chicago & Calumet Terminal*, R. B. Walsh, Haines Bros., and Col. Torrence. This is on lumber.

These are freight bills on lumber from Chicago to Hammond, to East Chicago, and some of those from Chicago to East Chi-
106 cago; that is the destination. They are all that way, Chicago to East Chicago. This reads State Line. The rate is 83; some are 83 a car, and there is one 150 pounds, 25 cents. There are none in there at a larger rate than 83 a car in car-load lots; this is dated July 24th, 1888, July 30th, 1888, July 24th, 1888, July 21st, 1888, July 14th, July 30th, July 16th, July 30th, and July 31st, all 1888. The same rate of freight was not given on East Chicago business that was given under this contract for the Towle or Distillery switch.

My explanation of these vouchers is that as soon as I found out that they were shipping this freight under this contract to the different consignees on the line I set up all the freights to the regular rate, 87.50. I am now holding a bill against D. Multnitz for 848, which he positively refuses to pay on account of a contract which he holds with Gen. Torrence. I put those rates up when I found the error. I found that out—I cannot tell you from memory—as near as I remember, soon after they commenced shipping.

I gave instructions to my revising auditor and also the Chicago agent and Hammond agent, stating the facts. They let the freight go through when it was billed in care of Torrence when it should have been billed to the parties direct.

The same rate as under this contract was not used for East Chicago business almost without exception practically down to the receivership, when my knowledge was drawn to it, whenever I could take it. I should state further that the Pierson Lumber Company shipped under that contract first, and the Pierson Lumber Company made the correction and paid me the full amount of freight up to the 87.50 rate. I cannot go into the dates of these things, but

these are the facts in the case. I decided that this contract
107 did not apply. When my attention was called to it I enforced the highest rate. C. A. Treat paid me the additional rate, and also the Horseshoe Brake Company. My best recollection as to the relative proportion of freight that went to East Chicago from Chicago over our road paying the 87.50 rate and the freight paying the 83 rate was everything that we could determine definitely under the contract got the 83 rate if he was entitled to it under the contract; everything above that paid the tariff rates, everything that we could get hold of. There was a question whether if it was billed in care of General Torrence whether we should set it up or not. As I recollect, I read that contract to Mr. Mulnitz to convince him that he was wrong. He said he had a contract with Gen. Torrence and positively wouldn't pay a cent more. I think I read this contract to Mr. Treat when I presented bills at his office for the collection of additional freight bills on freight going to East Chicago. I haven't looked up anything since I came here. I don't know what I was called here for. I cannot give you dates. I have no way of fixing it by any other event. I do not know anything about their building there at East Chicago. When I called his attention to this contract it was in 1888, I am pretty sure. Personally I cannot tell where the Hammond, Toll, or Distillery switch is, as it is called, of the Chicago & Atlantic. I don't know anything about the situation. About the mileage, whether that was further than the Chicago & Calumet Terminal or nearer, I am not furnished with that kind of information.

These items of car-load lots here were sent down billed to East Chicago without my knowledge at these rates. I didn't know it until I got hold of the building. I don't know how soon after the
108 month of July, 1888. I learned of it, about in the ordinary course of business, within a month. When I found it out I stopped it. If I remember, the arrangement was an S. G. O. settlement, a settlement through the general office for the benefit or interest of the parties residing in Chicago, whereby they might pay their freight bills. I demanded more freight from Multnitz. I don't recollect as to Bass. I am holding a bill against Multnitz now. I cannot say as to the Calumet Terminal Railway Company, Joseph Torrence, president. There was a question at that time as to whether it came under that 83 contract or not. I don't remember that name of Haines. I think when I called on Mr. Treat to increase the freight rate from the 83 rate, as it was billed, to 87.50 rate, I think I read the contract to him. I think it was in the fore part of 1888—the fall of 1888, I mean. I have had no occasion to recollect which Treat I saw. I locate the time as about the time I collected the bills. In the ordinary course of business that bill would come to my knowledge within a month. The reason I am so sure about Multnitz I wrote to him to come in and he came into our office there. I could not swear as a definite, positive fact that I ever saw Mr. Treat about this, but I could swear to Multnitz because he came to my office. I did not know either of the Treats at that time. It seems to me I called on him in the Rookery building;

also at the time I called on the Horseshoe Brake Company. There is one bill at the 83 rate; it is a bill care of J. W. Torrence. That is August 31st next; August 4th, J. T. Torrence, a car-load lot. I think that went through under the 83 rate, because they are billed J. T. Torrence. This in from Huntington does not come in the contract. The other is J. T. Torrence, 83, October 15th, 1888. This is October 13th. This first bill was from Huntington, Indiana.

109 The other is October 13th, October 12th, October 12th, October 12th; that is all; all on a 83 rate, billed care of J. T. Torrence. I do not know of any of those bills being rendered to Torrence at any higher rate before the receiver was appointed.

Those are addressed to J. T. Torrence. As I understand it, we continued to send the freight from Chicago to East Chicago, addressed to J. T. Torrence, at 83 a car; that is what I understood they are now; I couldn't tell exactly. If there was freight outside of this to J. T. Torrence or any one named in the contract it went. I mean that I didn't know of Torrence being charged any higher rate than 83 to East Chicago. I can tell by an examination of our books just what the fact is. Torrence should be charged more than 83 freight if it didn't come within this contract. There was some controversy as to this contract as to whether Torrence was entitled to that rate at East Chicago. It was not my intention at any time during this period to deny him that rate. I did not fix the freight rates. I can tell from an examination of our books, say from the 1st of July, 1888, down to the time of the appointment of a receiver, what the rates were that everybody paid. I do not know what the intention of the company was as to charging them more than 83, only under this contract he was receiving this 83 rate. It didn't apply to the industries at East Chicago. It applied to Gen. Torrence in connection with the contract.

Objected to by counsel for defendants.

I know about the relation that Torrence sustained to the company and his right to have a freight rate down there; it was only so far as this Toll contract was concerned and extension of it. It

110 was to be extended. There was a controversy as to what he was entitled to under the contract, as to whether he was entitled to this 83 rate to East Chicago. I did not mean that he was entitled to it personally to East Chicago; I mean that under the contract he was entitled to a 83 rate onto that Toll switch—the Toll switch at Hammond.

It was my construction of the contract; I haven't seen it for some time. The difference between Hammond and East Chicago is two miles and a half and their road don't go to East Chicago at all. I do not know whether there was any understanding between the officers of the Chicago & Atlantic or any of them and Gen. Torrence as to a special freight rate to East Chicago. I don't know whether there were any negotiations on the subject. I think I know the signature of the New York counsel of the Chicago & Atlantic, Mr. Atterbury.

That letter is written by Mr. Atterbury; the date is March 8th,

1887, addressed to Gen. J. T. Torrence, Chicago. This letter is dated on 4, 18, '90, to Gen. J. T. Torrence and signed by J. H. Cannon, gen'l agent for the receiver, April 18th, 1890. That is apparently Mr. Cannon's signature. He was the gen'l agent of the receiver. I don't know when a car starts from the city of Chicago over the Chicago & Atlantic, so far as the Chicago & Atlantic do the carrying of the car on their road, what point they reach where they leave that car, a car going to East Chicago or one going to Hammond.

111 BENJAMIN THOMAS, having been first duly sworn on behalf of plaintiff herein, was examined in chief by Mr. COOPER and testified as follows:

My name is Benjamin Thomas; I am vice-president and general manager of the Chicago & Western Indiana Railroad Company and the Belt Railway Company of Chicago. I was gen'l superintendent of the Chicago & Atlantic road from November 1st, 1887, until September 15th, 1888. I know General Torrence. While I was the general superintendent of the Chicago & Atlantic road there was no such arrangement made for any special freight rates by that company with the Standard Steel & Iron Company, the Chicago & Calumet Terminal Railway Company, the Calumet Canal & Improvement Company, or Joseph T. Torrence to take freight from Chicago to East Chicago and from East Chicago to Chicago at the rate of $3 a car-load by contract running twenty years. I remained general superintendent up to the 15th September, 1888; there was no such contract in operation while I was there; I mean from Chicago to East Chicago. I should think it is about two miles from Hammond, what is called the Vinegar switch that is referred to in the toll contract we have been talking about here, to East Chicago. East Chicago is further than Hammond at that switch. In 1887, when I went there, there was no Chicago & Calumet Terminal Railway Company.

Q. Show the court and jury the location of these points; show where the Vinegar switch is.

A. It is here (indicating). I will tell you how we used to do business there; cars for this Vinegar switch came to Hammond; the Vinegar switch is where or the point at which the Chicago &
Atlantic under that Toll contract agreed to take freight
112 to and from that switch to and from Chicago. That switch is right over by the steel company. There is Hammond right there (indicating). The steel company's works on this map are east. It is right in here somewhere; right over here. The switch of the track coming from Chicago strikes the Chicago & Atlantic a mile north of Hammond. From State Line to Hammond it is about a mile. The Chicago & Atlantic, taking cars from this switch going to Chicago—going to the steel works—would take them to Hammond, and there they would be taken around to these steel works with the switching engine. That was the practice when I was on the road. The train takes them to Hammond and then

run around—the Calumet Terminal was not in operation then—and then switch the cars to State Line and down this switch. I don't know what the practice is now.

There is a switch leading off from the main track to East Chicago before you reach Hammond, one mile north of Hammond. I know of General Torrence while I was there on that road, from November, 1887, to September, 1888, endeavoring to get a rate of freight between East Chicago and Chicago at the rate of $3 a car. The contract was never signed. It was submitted, but never signed. There was a contract to that effect. My recollection is that it was presented by General Torrence. It had not been accepted when I left the road, on the 15th of September, 1888. I am vice-president and general manager of the Belt line. That is a belt line of road leading around Chicago quite near the city. A large part of it is in the city limits now; nearly all of it. As to manufacturers on that road, what rate of freight, aside from the regular rates from Chicago to and from the points of destination, they have to pay on an average per car to get the stuff from their place of business, the beginning of the journey, on whatever railroad it is, from that point to their place of business—as to what is the average, about how much a car, we don't do any of that business ourselves. That is done by the Chicago & Eastern Illinois Railroad Company. I don't know what their rates are.

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Cross-examination by Mr. THOMPSON:

I do not know what rates were actually charged General Torrence during the months of July, August, September, and October by the Chicago & Atlantic for cars shipped to East Chicago from Chicago in 1888. I left there in September. I do not know what was actually charged for July, August, and that part of September which I was there between Chicago and East Chicago by the Chicago & Atlantic road. I was general superintendent of the Atlantic; A. S. Crane was the general freight agent. The superintendent had nothing to do with making freight contracts; that was no part of my business. I attended to the operation of the road, doing the business after they got it. I don't think that I know Treat. I don't recollect that I have ever had any conversation with him at all or his son; I don't think I know them. I know that a new contract had been submitted to the company, and that it was not accepted. I think the negotiations were taken up or begun in New York. The president of the road at that time was James H. Benedict. He lived in New York all the time these transactions were taking place, in 1888 and 1889. Charles L. Atterbury was attorney for the Chicago & Atlantic road, and resided in New York. I don't know whether the draft of that contract was drawn up in New York and sent out here by one of the officers of the road, either the president or general counsel. I don't recollect, if I did know, who drew the contract up. I do not know whether the proposed contract had anything to do with the interstate-commerce law. W. O. Johnson was local solicitor

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here at the time. I do not remember whether it was on his objection, as a lawyer, that the new contract was not made, the proposed contract. I do not remember whether it was sent from their office in Chicago or the office of the general solicitor in Chicago to me. I cannot name what car-wheel manufacturers similar to the Treat plant there are in Chicago. I do not know whether there is one at Pullman, formerly outside of the limits. I know nothing of the Allen Paper Car Wheel Company. I don't know that I can now recall any within a few miles of Chicago. There were certain conditions under which we would have consented to carry Torrence's business at $3 per car. Those conditions were that we would have exclusive rights over the track of the Chicago & Calumet Terminal, to and from industries, and he wouldn't give that.

ALEXANDER McKAY having been first duly sworn on behalf of the plaintiff herein, was examined in chief by Mr. COOPER, and testified as follows:

My residence is Chicago; my business is general freight agent for the Michigan Central road. I have been in that business about 28 years; have been located in Chicago over 20 years; have been general freight agent of the Michigan Central about 8 years. I know East Chicago very well; over our rails to East Chicago it would be about 23 or 24 miles from Chicago. Our rate of freight there at the present time is about $7 a car. I can give it to you exact. In
115 September, 1888, it was about $7.50 a car. I have no records as far back as that.

Q. There is a letter introduced in evidence here that I want to call your attention to from General Joseph T. Torrence (reading letter) from Torrence to "C. A. Treat car wheel works," dated November 22, 1888, shown *ante*; was that true or not?

A. The Michigan Central railroad has never since I have been connected with it had a rate as low as $3 a car from East Chicago to Chicago. I have had charge of the making of the contracts. I am general freight agent and would be the man who would make that arrangement. We never had such a contract. I have a list of the rates. (We did make an exception at one time about lumber logs.) Our tariffs give the dates, the commodities, and the rates; there is nothing private about them. I could give you copies of anything you want. The rates from Chicago to East Chicago were on the classes, about, 7½, first; 7, second; 6½, third; 6, fourth; 5, fifth; 4, sixth class—that is, on less than car-load lots. Those are our rates to-day; and on car-loads 2 cents a hundred pounds on cars making 25,000 lbs., which would be $5 a car. The first deviation from those rates was on November 17th, 1888, when we made a rate from Chicago to East Chicago and the stock yards on logs and lumber in car-load lots. On pig-iron and car wheels we never had anything different from our tariff rates, $7.50 a car, that I can remember. General Torrence was very anxious to obtain a rate not to exceed $3 a car between Chicago and East Chicago to build up the industries at that point. We objected to making so low a rate as that a car and never did it except on lumber and logs.

116 Cross-examination — Mr. THOMPSON:

I remember General Torrence coming into my office and talking with me personally about this matter several times. I have had many conversations with him. I do not remember any particular occasion when Mr. Treat came to the office with him and stayed in the outside office while I and the General talked inside. I have met Mr. Treat and his son both in my office on different occasions. I do not recall the occasion when General Torrence called on me and I and the General went into the outer office and the General introduced me to Mr. Treat. I remember shipping freight over our road and having a talk with the General about shipping over the ice-house tracks—Smith's Ice-house tracks. The General wanted some ties on his road. There was a rate made as to what should be charged shipping that way. There was a proposition to ship in that manner at $3 a car, and I was to submit the matter to Mr. Ledyard. I didn't agree to it. I submitted it. I did suggest to him that he go ahead and ship, with the understanding that he should pay $3 until I should hear from Mr. Ledyard on ties for his own road to be shipped to what we have known on our road as Smith's Ice-house switch—not general business for East Chicago. We took some material for General Torrence's road to East Chicago at that rate; no brick that I know of. I don't know that the General claimed he had a rate with me at $3. I remember a letter from General Torrence referring to a conversation with him as to a $3 rate. I remember a letter of this tenor, Mr. Beale:

Mr. BEALE:

"DECEMBER 3RD, 1888.

"Mr. A. McKay, general fr't ag't Michigan Central R. R., Chicago.

"DEAR SIR: Mr. C. A. Treat reports to me that you have
117 charged him $7.50 a car from Chicago to East Chicago. Mr. Graver wants to ship tanks out of East Chicago, and I wish you would instruct your agent in relation to this and advise him the rate of $3 per car which was agreed upon between you and myself. Mr. Treat is the gentleman I talked with you about, who will have large amount of charcoal iron from the East. Please attend to this as soon as possible. We will have a large amount of stuff coming, and we do not wish to complicate the matter.

"Yours truly, JOSEPH T. TORRENCE, *President.*"

That is as this copy reads. I think I have got the original, Mr. Beale. You can introduce your letter in reply:

"DECEMBER 15TH, 1888.

"Gen. J. T. Torrence, pres. Chicago & Calumet Terminal R'y Co., 525 Rookery.

"DEAR SIR: On receipt of your favor of December 3rd I took the matter up to our president, and he declines for the present to put into effect a rate of $3 a car between Chicago and East Chicago except upon logs and lumber on the ground that our traffic from Union stock yards and Chicago to Hammond is much more im-

portant to us than the East Chicago business at the present time. The representatives of the Chicago & Atlantic and the Louisville, New Albany & Chicago railways assure me in the most positive manner that their rates between Chicago and East Chicago are the regular agreed tariff, the only exception being that the Chicago & Atlantic are carrying logs at $3 a car of fifteen tons."

118 That is signed by myself. The assistant freight agent of the different Chicago roads meet in associations and discuss rates and keep informed about rates. I am familiar in a general way with the Chicago & Calumet Railway Company's track; know where those tracks run; just see it on the maps. There are no belt tracks crossing the lines coming into Chicago known as a belt railroad. I remember about the time when it was constructed, four years ago. They began the construction, as far as I can remember, about four years ago. The construction was begun on East Chicago and on the Lake Shore and pushed westward. As to rates made to East Chicago by way of the Calumet Terminal Railway Company on outside freight coming to a junction point with the Calumet Terminal Railway Company, what rates obtained, I would only know as regards our company. For instance, our connection with the Chicago & Calumet Terminal railway is different from the other roads. The other roads at Hammond cross our road diagonally, and we have our own switch into connection with the Chicago & Calumet Terminal, directly from our own road across the river northward, and when we take freight from an eastern point to East Chicago it is the same as to Chicago, or from Chicago to an eastern point the same as from East Chicago. I haven't any knowledge of how far that was true on other lines, but I should say what are known as the eastern roads would make a similar arrangement to ours. Our president made a contract with General Torrence and Towle and Young for a freight rate to North Hammond from Chicago. I do not remember what the price was, but our president made a contract with those gentlemen. I never saw the original contract, but there was a contract. In order to get into

119 East Chicago, our company had to cross the Calumet river, and our president made a contract, if I remember correctly, with General Torrence, Mr. Young, and Mr. Towle by which the Michigan Central road would have the right to swing a bridge on the north side of the Calumet river and also lay our rails on certain land controlled by these gentlemen to give us direct connection with East Chicago. That contract was made by our president and those gentlemen. I never saw the original, but it was a contract covering a specified sum of money, a number of thousand dollars, paid for this right of way, and instead of paying the amount, whatever it was, in money, the agreement was that freight for some iron works in South Chicago—I forget the name—and the manufacturing company was the institution, and the contract was signed by the three gentlemen named and they were to get a rate from Kensington to East Chicago and from Chicago to East Chicago at specified figures per car. Possibly it was $3 from Chicago.

That was a settlement that didn't go through my office. This statement in Torrence's letter, "Graver wants to ship tanks out of East Chicago, and I wish you would instruct your agent in relation to this and advise him the rate of 83 per car, which was agreed upon between you and myself," is untrue to read it that way. The fact is that Mr. Torrence wanted a 83 rate, and I said I would consult Mr. Ledyard, the president, who had made this other contract with this other place.

The COURT: What does he say in his letter in reply to that?

Mr. COOPER: He says, "On receiving your favor of December 3rd I took the matter up to our president and he declined for the present to put into effect 83 a car."

The COURT: Does not imply that he agreed and your
120 company failed to ratify it.

A. No, sir.

Q. It is not denied in this letter.

A. I overlooked it; the General had a good many conversations with me. I didn't make the contract referred to with reference to North Hammond—an industry at North Hammond or Hammond. I saw a copy of it, and my recollection is it was some industry at Hammond or East Chicago; I don't know which; it was some specific industry; it was named. Those three names were on the contract and this industry was mentioned. It was over three years ago. I should judge it was about 1887. I have had a great deal of correspondence with General Torrence in the last few years, but not about this matter. That contract expired long ago.

HIRAM R. MCCULLOUGH, having been first duly sworn on behalf of the plaintiff herein, was examined in chief by Mr. COOPER and testified as follows:

My name is Hiram R. McCullough; I am general freight agent of the Chicago & Northwestern, and live in Chicago. I have been general freight agent six years. We have what is called three trunk lines. What we call the Lake Superior line leaves Chicago and runs north to Lake Superior. The St. Paul runs from Chicago, northwest, through Madison and Hudson. The Western line runs directly west to Clinton and Council Bluffs. The North line, after it leaves Ft. Howard, goes more east than west. The Chicago & Northwestern connects at Elroy. The St. Paul branch connects with the Chicago, Minneapolis & Omaha road, which is owned by the Northwestern road. I have seen East Chicago on the map. I
don't know how far it is from Chicago.

121 In the month of September, 1888, and from that time on down to the present, down to last May, I think the Northwestern did not give the same rates of freight from East Chicago to all points northwest on our line as to Chicago. I couldn't say positively. I could say this; that all the applications that came to me personally (and I believe I know everything that was done towards extending freight east of the boundary line of Illinois) have been refused. We would put our rate to Chicago and have to take the

eastern rate from here to East Chicago. I am a member of freight associations; railroads coming into Chicago from the southwest also belong to the associations. I could not say what the other roads do.

Cross-examination.

By Mr. BEALE:

I do not know what the Wabash did; our road did not connect with the Chicago & Calumet Terminal anywhere physically. The Chicago & Calumet Terminal, up to a year ago, anyway, had not been constructed sufficiently north and west to reach the Northwestern. We have never done any business with them because we didn't reach it.

HENRY H. COURTRIGHT, called as a witness on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. COOPER and testified as follows:

My name is Henry H. Courtright. I am general freight agent of the Chicago & Alton; have been general freight agent of that road for eleven years. The general direction of the Chicago & Alton from Chicago is southwest to St. Louis—southwest part way and west part way; from here to Kansas City is a little south-
122 west—that is, west of south. I know a locality down 23 or 24 miles from here, southeast of here, called East Chicago. I have heard of it and seen it on the map.

Q. I want to ask you whether on the 11th day of September last the same rates of freight were given by the Alton road from East Chicago to all points northwest, southwest, and east that are given from the city of Chicago.

A. I don't think we did to all points west and southwest. There are points in Illinois that we don't.

Q. Had you any arrangement to that effect with General Torrence?

A. We had no connection with the road a year ago last September. Just as it was, without this Chicago & Calumet Terminal railroad being built, we did not give the same rates of freight to all points northwest and southwest and east to and from East Chicago that we did from Chicago in September, 1888. The difference would be the rate to Chicago plus the tariff from here to that point at that time.

Cross-examination by Mr. THOMPSON:

Q. Since the Chicago & Terminal railroad has connected with your road, do you not absorb the switching charges so as to make the rates to East Chicago and Chicago proper the same?

A. I think we do on nearly all business. I would not say positively from the time that it made connection, but practically, I think, since the spring of 1890 the Chicago & Calumet Terminal was connected with our road. There are points in Illinois since the connection was made that we don't make the same rates, points near

Chicago, for instance, Joliet, where our rate to Chicago would be not
much greater than we would charge from our junction to
123 South Chicago. We charge more, but there are quite a few
points in Illinois.

MILO S. HASCALL, having been recalled on behalf of the plaintiff, his direct examination was continued as follows:

By Mr. COOPER:

Q. What statements did Torrence make to you and Mr. Losh with reference to a freight rate between Chicago and East Chicago?

A. We had quite an extended talk at the office and then we started out. That agreement which I am now talking about was not in writing. The agreement between me and this company was not all of it reduced to writing.

The COURT: You are relying on the fraud.

Mr. COOPER: On a fraudulent statement outside of the agreement altogether.

A. After this conversation in his office—the first conversation was in General Torrence's office—and then we made up to go out there at a certain time, and it was told when the train started and we went out there. We went as far as South Chicago with General Torrence and then we hired a team there which took us to East Chicago. This conversation was going on during all this trip and after we got there, showing the surroundings, but the principal inducement held out to us to come there was that we could have a 83 rate in and out of Chicago at that time, which he had secured, and that he had been negotiating for a better rate, and if he got a better rate we were to have the benefit of that also. One inducement was that they were digging a canal. He stated with what railroad he had this arrangement: I think with the Chicago & Atlantic railroad, though I wouldn't be certain about that. I wouldn't be certain that he
named the railroad. The length of such an arrangement would
124 exist was twenty years. I understood it that he had a rate
of 83 in and out of Chicago secured for twenty years. I wouldn't be certain at that time whether he had a map or not. It was in the early stages of East Chicago that we were there, and I wouldn't be certain. We were right there on the ground and saw the thing for ourselves. He stated about the rates of freight between East Chicago and other points other than Chicago as compared with rates between Chicago and those points; that he had the same rates out of East Chicago as were prevailing in Chicago, and there was to be a telephone established there and we could order cars from Chicago whenever we wanted. Nothing was said about Hammond that I recollect of. We acted on those representations, and on the strength of those representations we bought forty acres of land and established our plant. We got a 83 rate, but not by virtue of his contract; we got it ourselves. We found he had no such contract with any road we could find out. He said he had it or was expecting to get better or was negotiating to get better rates. I do not remember whether he said it was in writing.

Cross-examination by Mr. THOMPSON:

Mr. Lesh was the one that negotiated that 83 rate. I don't know whom he went with. I didn't go at all. We have not had a 83 rate on logs and lumber ever since we have been there; we have not now. Our logs are mainly coming from the other direction at the present time. Nine-tenths of all our stuff — comes from the East does not come through Chicago at all. I do not understand that when it does come through Chicago we get a 83 rate. I don't know positively; I don't have charge of the details. I think Mr. McKay
125 in his testimony said there was such a contract as that with the Michigan Central for logs and lumber at that time. I do not know of any logs or lumber charged at a greater rate than 83 a car from this direction. I know what my partner tells me; of my own knowledge I don't know; I don't have charge of the details of the business; I said I found out there was no contract pretty soon after that. We didn't commence receiving logs until some time after we bought the land; I should judge it was somewhere the next spring; I wouldn't be certain. After we bought the land we had to grade it and clear it, and then had to have our saw-mills built and get tracks in before we could get the logs, and I think it was probably some time—the fore part of 1889. I think we located there the same time with the Treat Manufacturing Company. Our plants are not over a quarter of a mile apart, if they are that. In fact, we located on the south end of the forty acres we bought, but our north line comes within twenty rods of the Treat plant.

I should say there was not more than that. I know Mr. Treat and his son; became acquainted with them some time after we located there; I don't know just when; probably five or six months. They were there building their works, but I didn't come in contact with them while they were building. I could not say when I did make their acquaintance. I know they had a few brick on their place where they were going to build before we commenced building. I did not have any attorney when I made this contract. It was not submitted to an attorney. General Torrence did not claim he had it in writing at all; I did not see it; I never saw any contract in writing that he had with any railroad. It was not for some
time after that I talked over with Mr. Treat the absence of a
126 contract for a 83 rate, as I recollect it; probably six months. I don't know that it occurred to me at that time that a railroad might not keep that agreement with him, if he had one, nor that if he had such a contract a railroad would become insolvent or be sold out. It was freight rates that induced us to go there. I think before there was any talk between me and Mr. Treat or James Treat, his son, about the matter in controversy it must have been at least six months after we were operating there. I may be at fault, but I don't recollect exactly. I recollect their telling me of the question of freights. I think, as near as I can remember the way we come to speak about it, I noticed that they were not running after they got their plant up; commence to run a little while, and then were not running. This was after they commenced operating as I recollect it.

FRANK B. FELT, called as a witness on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

I am in the iron business, vice-president and manager of the National Forge and Iron Company. That company's works are located at East Chicago, Indiana; they commenced to construct in April or the 1st of May, 1889. That company had a contract with the Standard Steel & Iron Company, and the works were located and constructed there under the contract and representations that were made in connection with it. The negotiations was carried on, on the part of the Standard Steel & Iron Company, with General Torrence; those negotiations commenced, I think, in April, in the early part of April, 1889. The negotiations on the part of the Na-
127 tional Forge and Iron Company were conducted through Mr. Schwartz, the president, our superintendent, Mr. Ross, and myself. I myself, before the contract was signed, had interviews with General Torrence upon that subject. The question of the freight rate to and from Chicago was discussed between me and General Torrence, and the question of freights to other points than Chicago, to and from East Chicago, was also discussed between us. I went to see Gen. Torrence after he had been seen by Mr. Ross, and General Torrence said he would be very glad to have us locate at East Chicago. He showed us a map (I never had been there) giving the location, and said the important point was that it would have the lowest freight charges to and from Chicago of any point around Chicago, and, in addition to that, have the same rate in and out, as to all roads reaching north, south, east, or west, as though we were located in Chicago.

Mr. COOPER:

Q. Is that the map?

The COURT: They are all the same.

A. No, sir; they are not all the same. That is the map that was shown to me; the map which I hold in my hand is the map that was shown to me by General Torrence; I know it is, because I see my initials on it.

Said map is as follows:

(Here follows diagram marked p. 128.)

129 General Torrence said that he had a rate of freight. He said the freight rates to East Chicago would be $3.50 a car, $3 a car being the rate of freight to their line, the Chicago & Calumet Terminal railway, and half a dollar a car the Terminal switching charges over to East Chicago. He said he had a contract for $3 a car with the Chicago & Atlantic railroad for twenty years, and we should have the benefit of that rate if we located at East Chicago. We thereupon closed the contract with him, but we never got that rate. It was not embodied in the contract because he said it

was the same as he had made his contracts, and he expected to get a better contract than that was, which was the reason that it was not in that contract. I didn't ask him to see this contract, but I relied upon it implicitly. I asked to put it in the contract.

The COURT: Did he refuse to put it in?

A. He said it was the same as all the contracts he had drawn.

Q. Suppose it was, you say on that you relied, that you would not have located there, and would not have made the purchase but for your reliance on that statement?

A. That we would have that rate? A. Yes, sir.

Q. And yet you didn't ask him to see the contract and didn't require him to put that in the contract—in your contract? Is that so?

A. Well, I tried to have him put it in the contract, but I relied entirely upon his statement.

Q. If you tried and he refused, didn't that excite your suspicion?

A. No, sir, because he even went further than that. That question was raised at the time the contract was signed. He said he was negotiating with other roads or had completed negotiations with one other road, and he stated if he got a lower rate than that he
130 would give us the benefit of it. They didn't specify the amount—the rate which they now have. I suppose the contract is either in Mr. Gurley's office or in our office. That contract was substantially the same language with reference to freight rates as that of the C. A. Treat Manufacturing Company. I have seen and read both contracts. They are substantially the same. The rates of freight, in fact, ever since we commenced operations have been between Chicago and East Chicago rates ranging from $5 to $11 a car. We had to pay to points northwest and southwest, ascompared with Chicago rates, in the majority of instances, the same as the Chicago rate, with additional charges from East Chicago to Chicago, with the current rate from East Chicago to Chicago. I complained to General Torrence that we had to pay those extra rates. Immediately after we commenced building operations I went to Torrence's office and complained as to the rates that we were paying. He wanted to know how long—how much we would ship in there during the construction of the plant. I told him that we would probably ship in from fifty to seventy-five car-loads to construct our plant. "Well," he says, "you go right along and pay these rates, and by the time you are in operation I will have the thing all settled up in shape again and it will be back on the old contract, and any difference that you have to pay charge back and I will settle it." He didn't say there had been a change in the contract.

Q. He said in the meantime that you would be back on the basis of the contract; that informed you that you were off, didn't it?

A. No, sir; I didn't so consider it. We were shipping over the Michigan Central road in there, and I had gone to General Torrence about that, and in the meantime he had taken me over to the Michigan Central road in relation to this rate. I went with General Torrence.
131 We wanted to get some cars for loading sand for filling up around our works, and at the same time I went in to talk

with him about the rates of freight we were having to pay—switching out there. We were just commenced loading iron and shipping it to East Chicago, and I found the rates of freight were very high, higher than what I had counted or relied upon. He said, "Won't you go over to the Michigan Central road with me—over and see Mr. McKay?" So I went over to Mr. McKay's office, and he went in to see him and I waited on the outside. He came out, and he says, "I have got that thing all fixed right now. Just step in here with me." I stepped in, and he says, "It is all right. You commence shipping right along on the Michigan Central road and Mr. McKay will give you these cars." I went in and talked with Mr. McKay, and when we got ready for these cars we had to make a switch down at 12th or 14th street, and we shipped some cars over the Michigan Central road, and soon after that I found the freight bills were coming at the regular old rates, and I went in to Mr. McKay and Mr. McKay said that that rate was not good; that there was no rate of $3 or $3.50 a car—$3 on the Michigan Central road and half a dollar on the Terminal. Soon after we commenced construction we found the freight bills were charged more than $3.

Q. Then on the faith of what did you continue the work there? When you say you could not get the three-dollar rate, then what induced you to continue? You say you would not have gone in there but for the three-dollar rate. Then why did you continue?

A. Because Mr. Torrence said it would be all right; to "Go right ahead and rely on me and I will see that the thing is all right"—that that rate shall be made.

132 Q. You say that that rate was not being done. Did he tell you then that there was another contract, and did you then demand to see his contracts?

A. No; I did not demand to see his contract. I testified that he said I could charge back the extra freight rate and he would pay it. I believed what Torrence told me as a matter of business. He said, "We are building that Chicago & Calumet Terminal railroad." I knew that was so, that they were building it down there. He says, "We can't afford to do anything but what we agree to do."

The COURT: Didn't you know when they charged you more than $3 that you didn't have an old arrangement with them? You didn't believe then that he had that contract, did you, when the bills came in for more than that?

A. I believed that they had that contract, but I didn't know whether he could enforce it or not; that the contract which he gave me was to give us, after we had got our plant up there, the same rates of freight.

Q. After you had got your plant up—this was before you got the plant up, and isn't this true, that you relied upon General Torrence's statement on account of his being at the head of these three great enterprises there, representing great wealth, and it was a common thing for a business man to do under those circumstances, to take the statement of the president as to a given thing; isn't that so?

A. Yes, sir.

The COURT: Do you mean to say now that for twenty years that you went there on the faith that for twenty years he would refund to you any amount you might be obliged to pay over and above $3 a car?

A. I supposed that was what we would have.

Q. Do you mean to say you relied on that?

133 A. I relied on having a $3.50 rate.

Q. And you would not have gone there but for that reliance?

A. I would not have gone there if we did not have that rate of freight, because we talked about the question of location.

Cross-examination by Mr. BEALE:

Our works were located at East Chicago in the spring. We commenced building in the spring of 1889. There were the C. A. Treat Manufacturing Company and saw mills there, J. H. Lesh & Co.'s at that time. There are three or mills there, which have since been divided up into two concerns. There was a horseshoe plant that had been built which was in operation at that time. It is not operated now. I knew several of the people connected with it. Mr. Lamb was the superintendent, I believe. There was the Graver tank works. I think those were all the industries. I don't know of any new ones that were going in there then; some have gone in since, within a recent period after we went there, a sort of an agricultural plant called the "Famous" Manufacturing Company went there. When we were negotiating with Gen. Torrence for the location of our plant there I went down to that locality and looked over the ground. I talked with only one man, I think, when I was down there. I talked with Mr. Lamb, who is connected with the horseshoe works, but whether I met him at that time or before or after I won't say. I talked with him on the subject of rates. He said that he—well, he said that he knew there was; no, he said he didn't know—well, excuse me, he said he had understood there was a basis of rates on freight down there, and they had gone in themselves on the idea that they were to have a cheap rate of freight. I don't think I asked him whether they were getting them or had got them. I think he was the only manufacturer

134 that I talked with. I was down there only one afternoon. I didn't ask the manufacturers; did not talk with any one else around there, any of the employees, I think. I did not talk with any of the railroad people. Subsequently I talked with the railroad people. I talked with Mr. McKay, of the Michigan Central road. I talked with Mr. Borner, the general freight agent of the Ft. Wayne road, who lives here. I don't remember of talking with any other party connected with the roads running down there. I never talked with Mr. Crane. I talked with Mr. Johnson, counsel for the Chicago & Atlantic, along after I built the plant. Well, I never talked with the Atlantic road as to the existence of such a contract with General Torrence. That is the one I understood the contract was with. I talked with Mr. McKay after I had under-

stood that a rate had been made with Mr. McKay, and Mr. McKay said that it had not. That must have been six months after we commenced building our plant, because the plant was about ready for shipping iron. It must have been four or five months after we had made the contract. That was the beginning of shipping iron and material. I don't know Mr. Crane. I never went to see him at all. I did not talk with Mr. Thomas, his assistant. Mr. Johnson is the only man of the Chicago & Atlantic people that I ever talked with. I have never saw or read over this contract with General Torrence and other with the Chicago & Atlantic road. We have a suit of this kind against the Standard Steel & Iron Co. on a similar cause of action. It is pending in the Indiana court. We have the same attorneys as the Treat Manufacturing Co. has in this case.

135 ROBERT ROSS, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is Robert Ross: I am superintendent of the National Forge & Iron Company: I have been superintendent of that company since April, 1889, since it has been doing business. I was present at the interview had before the contract was signed between the Standard Steel & Iron Company and the National Forge & Iron Company. Mr. Felt and General Torrence were present at the time I was. That is the conversation to which Mr. Felt referred *to* in his testimony. I was first up to call on General Torrence about a rolling mill, a site for a rolling mill, and I went and saw General Torrence. I heard him tell Mr. Felt that he would give a three dollar and a half freight rate from Chicago to East Chicago; three dollars of it would go to the railroad line and a half a dollar would go to the terminal road, and that all the railroads would have the use of the Belt line under those conditions. He said he had a contract with the Chicago & Atlantic for twenty years for a three-dollar rate. I had a conversation with him myself at another interview on the same subject and he made the same statement to me. I, as superintendent of this company, with the view of locating the plant of this company (of which Mr. Felt is secretary) in East Chicago, went to see Torrence, and that was the time he made the statement to me.

Cross-examination by Mr. BEALE:

I did not see the contract *with* General Torrence claimed to have, nor have I ever seen it. I was not present when the contract between General Torrence or his company was executed or when it was drawn.

136 MARKS SCHWARTZ, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is Marks Schwartz. I am manufacturing new iron. I am president of the National Forge and Iron Company, which is

the company referred to by Mr. Felt and Mr. Ross; prior to locating at East Chicago I met with General Torrence, representing the Standard Steel and Iron Company, in his office at Chicago, 525 Rookery building; that was in the neighborhood of April, 1889. I could not recollect exactly the date of our contract. It was in this way that we came to locate there; we asked him what his rate was going to be to East Chicago. Well, he says, he has got a rate from the Atlantic for twenty years of 83, and he will charge a half a dollar to go over his terminal line; then I asked him a question about that. I asked him, Suppose he should sell that railroad probably the parties will charge us more. "Well, we got to stop with you three years in order to sell our lots; we got to treat you right, and do justice with you folks." He was selling the lots of the Standard Steel & Iron Company. Mr. Torrence is president. I don't know whether it is his; I could not tell that; they were all one concern, I suppose; I don't know. He said it was the same thing to East Chicago as it is to Chicago, from East Chicago the same as from Chicago. Upon the face of those representations we entered into a contract with the Standard Steel & Iron Company on behalf of the National Forge & Iron Company; we did not get the rates; first, we started to haul some stone and there came in a bill for 87.50, and I told Mr. Felt to go down and see why it was 87.50; he went
137 down to Mr. Torrence, and I believe I went myself the second time, and more cars came in, and General Torrence said, "You should keep on and say nothing, and I will return the money at the time when the plant will be completed, and I will have everything arranged with the other roads there, and probably will get it for a little less beside."

The Court: Did you have the advice of a lawyer about this contract?

A. No; we didn't, sir.

Cross-examination by Mr. THOMPSON:

We made some inquiry as to what rates were to East Chicago; I didn't ask anybody but General Torrence. At the time we made our contract, in May, 1889, there were a large number of industries there. I didn't inquire of them. I very seldom went to East Chicago; I am always here in town. General Torrence said to me that he had a contract himself and that he would see that we had the benefit of that contract. Our company did not have any written contract with the Standard Steel & Iron Works on the rate. We had a contract, but it didn't mention anything whatever of the rate we should have; it didn't say that the kind should be different from the Standard Steel & Iron Company. I have got the contract. That contract was drawn after I had had a talk with General Torrence. I talked with him first about the rate of freight, and then the contract was drawn. I was present when it was drawn. I was present when it was signed. I don't read much English, and I don't know if the agreement about the freight is in the contract or not. We didn't come so far with everything. I believe Mr. Felt or

somebody was there when I signed it, and I relied upon them to look over the contract and see that it was right.

138 Redirect examination by Mr. COOPER:

I never thought anything that General Torrence would do different; that it would be different: I believed what he said. Before I went into this business I was in the scrap-iron business: I was a buyer and seller of scrap iron in the city of Chicago; I had been in that business eighteen years.

JAMES M. ARNOLD, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is James M. Arnold. I have been in the machinery business for many years. In that business I bought and sold second-hand machinery. I am not actively engaged in any business at present. I examined the machinery and apparatus in the plant of the C. A. Treat Manufacturing Company, in East Chicago, on Saturday last. There were all the appliances apparently necessary for the conduct of a foundry and machine shop. In the foundry were pits for annealing car wheels and molds for casting them and cupolas, hose, gas pipes, cranes for swinging, ladles for handling the metal, and in the machine shop was a large engine, lathe, boring mill and upright slaughter, car-wheel press, and other machinery of that description. There was an engine and boiler in the boiler-room, and there was an extra engine in another room, which was under cover and had been doped: I mean by that that it had been painted with grease to protect it from rust. I should think it had been preserved. I run over the machinery, apparatus, and fixtures and put down what I considered would be a fair value for all
139 these appliances, and my estimate for the whole was $5,580. I only estimated the appliances for conducting the business, not the real estate. $5,580 was the footing I made on it—that is, on the theory that the machinery would be taken away from there and sold. I doubt very much if it could be sold to realize that—not more than that, anyhow. As a dealer I would not pay that for it. I have aimed to put it down at a price at which it could be sold. That is what I estimated it would bring, and it would require perhaps two or three weeks to bring that, in order that it might be advertised properly to get before the trade, and at forced sale.

Cross-examination by Mr. THOMPSON:

I have no knowledge as to whether that machinery when it went into the plant was second-hand. I do not know what it would cost to purchase and set up that machinery as it is there. I don't know what the land is worth. There is a great deal of work in setting machinery up and it costs more in some places than others. I can make an estimate of what the machinery itself would cost without the setting up. I did not make an estimate of that. I could not state what it would cost to purchase that machinery just as I found

it there without looking over some data I may have from manufacturers of that class of machinery to see what the present prices are. I cannot state definitely. I looked at it from the standpoint of a buyer of second-hand machinery to sell again; to be taken out of there and sold to such persons as might want that class of machinery.

140 TUESDAY, *December 2nd*, 1890.

Court met, pursuant to adjournment, at 10 o'clock a. m.

OLIVER O. FORSYTHE, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is Oliver O. Forsythe; my business is real estate. It has been my business for some time; I don't remember how long. I was working for my father, Jacob Forsythe, in the year 1888. My father is the Jacob Forsythe who, with my mother, Caroline Forsythe, was interested in this tract of ground originally upon which the Standard Steel & Iron Company afterward located, East Chicago. My father had been at one time connected with the Standard Steel & Iron Company. My mother is interested in it now. I am acquainted with Mr. C. A. Trest, the president of the C. A. Treat Manufacturing Company, and with General Joseph T. Torrence. I was acquainted with both of these gentlemen in the year 1888. I remember upon one occasion visiting East Chicago in company with Mr. C. A. Treat and General Torrence. It was before Mr. Treat located there. I don't remember the date exactly; it was some time in the summer. General Torrence told me he was taking Mr. Treat down there to examine some ground, about locating there. We drove down from Sheffield with my father's team. I think I drove. Mr. Treat and General Torrence and myself were in the company. We drove down there and looked over the ground, and General Torrence talked about the fine ground and asked Mr. Treat if it would suit him, and Mr. Treat looked at it a good while, thought it over, hardly thought it was enough, and then they talked over the advantages of the location and freight rates, and so forth. General Torrence said he had a freight rate in

141 there of three dollars into East Chicago. I don't recollect his saying what road. He said he had it over more than one road, I think, from Chicago to East Chicago. He said the duration of that contract was about twenty years. He said he controlled the railroad he was building there, the Chicago & Calumet Terminal, and he would soon have that freight with all the roads. He had a contract with one road. I think he said the rates would be the same from there as from Chicago; that is my recollection. He said to Mr. Treat that location would be the same as if he was in Chicago. He said it would be a 83 rate. In the month of February, 1889, at the office of J. Kennedy Todd & Company, I met there some of the officers, directors, or stockholders of the Standard Steel & Iron Company. I could not state about that date in February, 1889, but I recollect about meeting some of them there at different

times. I remember a conversation in which Mr. Treat's son was mentioned. Mr. Kennedy Todd and Mr. Barring was present and myself. J. Kennedy Todd was one of the owners of the Standard Steel & Iron Company at that time. I think he was a director, but I am not positive. I understood General Torrence to say that he then had a $3 — with more than one company, and he expected to have that rate with all the companies.

Cross-examination by Mr. BEALE:

I cannot recollect the exact date that I was at East Chicago with General Torrence and Mr. Treat. It was some time ago. It was prior to his locating there. It might have been in July, 1888; that is over two years ago.

Q. Was there anything occurring at that time to fix the exact conversation in your mind especially?

142 A. Yes, sir; I took quite an interest in hearing what was going on, and that was a new place at that time; we wanted to fill up with manufactories; we had an interest in the property, and I was interested in seeing what was going on. I next had occasion to recall that conversation to my mind when Mr. Treat asked me if I recollected what took place on that drive. That was several months ago, but I don't remember exactly; I expect it was within a year. From the time of that conversation I did not have any occasion to recall it to mind or think of it again for a year and a half, until Mr. Treat spoke, except another incident that took place down there that made me think of it. General Torrence was driving around while we were looking at the work that was going on—streets, &c.; he was looking for a man, a superintendent of his, named Johnson. When he found Johnson he pitched into him and gave it to him hard; and Mr. Treat said if it was he he would fight or quit. This was when we were down there together. I don't know as that would fix the exact language, but I have heard before from General Torrence about the rates. In the beginning of the formation of the company I heard he had such rates as that. I did not know anything about the Hammond switch contract. I have heard since that there was such a contract with the Hammond switch. I did not know of it at that time. At the time General Torrence said to Mr. Treat that he had this twenty-year contract we were all in the buggy together; we had left East Chicago and were driving towards Sheffield. We were not near Hammond; we were between East Chicago and Sheffield. General Torrence said he had a contract for rates to East Chicago. I am positive now, and swear positively to the jury, that he used the words East Chicago. General Torrence was talking to Mr. Treat about stocking his, Treat's, company for

143 $100,000. General Torrence told him the right thing to do was to stock it for $100,000 and that he would place some of the stock in New York city. Gen. Torrence said that in substance, as I recollect. He asked Mr. Treat how much of a company he had to handle, and asked him some of the facts about his company, and Mr. Treat told him, and the General Torrence asked him about stock-

ing the company, saying that was the right thing to do—was to get up a stock company. Mr. Treat told him some of the facts about his company. I don't know what facts: the amount of money — had invested in it. I don't recollect exactly the exact statement of what amount of money he had invested in his work. No one else was present. General Torrence, Mr. Treat, and myself—we three men were in the buggy. I had been down there before. My home was at Sheffield. It is about four miles. My father and mother have been interested in this land for many years, more than twenty years. My brother was also interested at Hammond. My family have been interested in property down there—I mean by family my brother. I had a little interest in Hammond myself. At that time they were building. I think they were building the Terminal and Fort Wayne. Those were the only two roads building there. Whether they were completed at that time or not I could not say, but I think the Ft. Wayne was handling freight in there at that time. I don't think the Terminal was. That is in 1888 I am talking about. I am not in any way connected with the Standard Steel & Iron Company at the present time. I was connected—that is, I was paid by checks of the three companies. I was connected with the Standard Steel & Iron Company and performed services for it. I don't think I was connected with the Standard Steel & Iron Company at the time of this visit. I was afterwards. I guess my employment
144 or connection ceased a little over a year ago. There was not anything for me to do and I spoke to my father about it, and he said I had better speak to Gen. Torrence, saying, "If there is nothing for you to do, there is no use in you keeping on there." So I spoke to General Torrence and said there was nothing for me to do, so I quit. I was not discharged by General Torrence on account of any dissatisfaction with my services; he never expressed any dissatisfaction with my services whatever.

Redirect examination.

By Mr. COOPER:

In 1888, when I was there, the Standard Steel & Iron Company was laying out streets, grading them at that time. I have been down there recently, within the last year. I think the Standard Steel & Iron Company have built on the property there in the town, on the property they have not sold. I don't know as they built the depot; they built the opera-house. They had graded streets and were putting up some buildings there for the men to live in. I don't recollect the opera-house being built at that time. I don't think there was anything more said during this conversation on the subject of freight rates. I have related all that I remember that was said about freight rates.

J. D. KERSHAW, being recalled on behalf of the plaintiff, was examined in chief by Mr. COOPER and testified as follows:

I was asked yesterday, at the conclusion of my examination, to hunt up certain data. I had to go — 14th street for it, everything prior to the appointment of the receiver being at 14th street.

145 Q. There was one question asked you by the court as to whether you knew of Torrence being charged any higher rate than three dollars to East Chicago?

A. Yes, sir.

Q. What was the fact?

A. The fact was that he paid seven and a half dollars a car. He began to pay seven dollars and a half a car August 6th or August 8th, 1888; somewhere between those dates—6th or 8th. He continued to pay this rate from Chicago to East Chicago until, I think, the Chicago & Calumet Terminal was opened. I think that was about December, 1889. I have no particular data of that, only a circular I received about that time—I think about December 1, 1889. I think that is the date the circular states. As to those charges, there are various dates. They run all the way down from May 8th, 1888, up to May, 1889. I have written to Mr. Lapham at various times, calling his attention to the fact that these amounts remaining unpaid. If I remember correctly, the first statement took up in detail the bills that had been rendered on which they had paid $3 a car, and I made a correction, adding $4.50 for them to pay the Chicago & Calumet Railroad Company and J. T. Torrence. That was the way the stuff was billed, either to J. T. Torrence or the Chicago & Calumet Terminal Railroad Company, or some of those other industries, care of J. T. Torrence. I don't recollect now if I have any bills to the Standard Steel & Iron Company; I don't remember the name the Calumet Canal & Improvement Company, but to other industries located at East Chicago in care of J. T. Torrence. There was William Graver that I had some little trouble with in collecting the difference with. I do not recall the names of the others. I think there is a letter in my letter book referring to the C. A. Treat Manufacturing Company—

146 no; it is referring to the Horseshoe Brake Company. It is either one or the other. I won't say positively. I don't remember. I have my letter book here (witness refers to book) under date of—

"FEBRUARY 19, 1889.

Marshall Lapham, Esq., auditor C. & C. T. Ry Co., 529 Rookery building, city.

DEAR SIR: I herewith return to you expense bills pro numbers 92, $4.50; 101, $4.50; 109, $4.50; 128, $4.50; 134, $4.50; 11, $10.50; 73, $18. I also return to you two expense bills pro number 265, $4.50, and 154, $7.50.

In your letter to Mr. Crane of January 28th you stated pro number 73 was for C. A. Treat Car Wheel Company. You will notice the way the bill reads, Chicago & Calumet Railroad Company. I will ask you therefore to see that this amount is collected and report same to me.

I will also ask you to be good enough to advise me where Mr. Treat can be found in the city of Chicago, if he has an office here; also E. L. Lamb and D. Mallinet.

Please send me check as soon as possible for the amounts above stated, as I am very anxious to close up this old matter, and oblige,

Yours truly, J. D. KERSHAW, *Auditor.*"

The letter is dated February 19th, 1889.

Cross-examination by Mr. BEALE:

It is my recollection that we collected $7.50 a car from General Torrence, or that we demanded and collected it. I hardly think that we collected any of that $7.50 before the 11th day of Septem-
147 ber, 1888. Prior to the 11th day of September, 1888, I find (witness reads letter): "November 23rd, referring to my letters to you of 11–16." This is to Marshall Lapham, auditor of the C. & C. T. R'y Co.—that is, the Chicago & Calumet Terminal Railway Company—and Mr. Lapham was also in the employ, as I understand it—well, the whole three concerns were together.

"Referring to my letters to you of the 11–16 and expense bills attached, 878, also my letter of 11–21, with expense bills attached, $59.80, since sending you these I have heard nothing from you. I must therefore ask you to be good enough to send me check for the above amounts as soon as possible, and thus oblige,

Yours truly."

That is the letter I referred to a moment ago.

"Marshall Lapham, auditor C. C. T. R'y Co., 529 Rookery building, city:

Enclosed please find five expense bills, account J. T. Torrence, C. & C. T. R'y Co., $59.80, for which please send check as soon as possible, and oblige.

Witness read said letters as follows:

"NOVEMBER 16.

Marshall Lapham, auditor C. & C. T. R'y Company, 529 Rookery building, city:

Enclosed please find expense bills in favor of this company, 878, for freight delivered to East Chicago, account J. T. Torrence, for which send me check as soon as possible, and oblige."

The rate is $7.50 a car. There is nothing in that letter to directly indicate it. I know that through September and through
148 October, 1888, we were charging three dollars a car, and that afterward we claimed an additional amount. That was done simply on account of an error. There was freight during July, August, and September, and through October, 1888, billed at $3 a car.

That I do not remember exactly. I know they started out and billed it that way. I do not know positively whether prior to September 11th the Atlantic charged more than $3 a car; $3.50 a car. I probably can find it in this correspondence. Here is a letter:

"AUGUST 8TH, 1888.

Marshall Lapham, C. & C. T. Ry Co.:

I have your favor of the 4th inst. on the subject of rates per car from Chicago to East Chicago. This part of your letter I do not understand, as no one has charged you $7.50 per car that I know of. This shipment in question of which our agent at Hammond has written me were on bricks in car-loads from Pullman Junction to East Chicago. This rate charged you by our agent, $7.50 per car, is the correct rate as furnished by our general freight agent.

(Signed) J. D. KERSHAW, *Auditor.*"

FREDERICK ROGERS, called as a witness on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. GURLEY and testified as follows:

My name is Frederick Rogers. I am assistant general freight agent C., B. & Q. I have been acting in that capacity since October, 1887. I know a place called East Chicago. East and west is the general direction of the C., B. & Q. system. It goes to Kansas City. We haven't any rates to East Chicago. Goods shipped
149 to East Chicago would go at the rate of the line from the point of shipment to Chicago, subject to charges from here by any line which should happen to take it. I presume the same condition of things prevailed in September, 1888.

Cross-examination by Mr. THOMPSON:

I believe we have no direct connection with the Chicago Terminal road except through the Belt line. Where freight is shipped over our road from western and southwestern points and is shipped to industries along the Belt line in some cases it might be possible we absorb the switching charges. That depends whether or not in a good many cases we would have to answer individual cases. You would have to specify. Any industry along the line which is not reached directly by one of our competitors from the point of shipment we do not absorb switching charges. You would have to ask me when we did and give me the specified facts. For instance, Omaha is a point of shipment. We ship cars from Omaha to industries on the Belt line. We do not absorb that switching charge in all cases, in other words. Chicago rates apply to the end of our tracks. There were several officers in the freight department who quoted rates in 1887 and 1888. I quoted some myself. Thomas Miller is the general freight agent to-day. E. T. Ripley was at that time. Mr. Paul Morton was general freight agent after Mr. Ripley was made traffic manager or general manager. It was the 1st of April, 1889, Mr. Morton was made general freight agent.

150 ROBERT M. CHERRY, called as a witness on behalf of the plaintiff, being duly sworn, was examined in chief by Mr. COOPER and testified as follows:

My name is Robert M. Cherry. I live in Chicago, where I have lived about thirty years. I am a dealer in pig iron—manufactur-

ing and selling. I know Mr. C. A. Treat, president of the C. A. Treat Manufacturing Company of Hannibal, Mo. I have known him, I should think, about eighteen or twenty years. I have had to do very extensively with car-wheel works. I have been in a great many shops. I know somewhat about the manufacture of car wheels. I have an opinion about a good shop when I see it. I think I am a competent judge of what is a good car-wheel works.

Q. Have you examined the plant of the C. A. Treat Manufacturing Company at East Chicago—the car-wheel works?

A. I have seen the shop of the C. A. Treat Manufacturing Company at East Chicago; have been in it when it was in operation in all of its appointments. It seemed to be in first-class shape. It was a large building. Mr. C. A. Treat has a very good reputation as a car-wheel maker. I have always heard him well spoken of among railway companies, and it is the railroad companies that he makes his sales to—that he makes the contracts with for the sale of his manufactures and with car manufacturers.

Cross-examination by Mr. BEALE:

I was down there and looked over that plant some time in the late spring or early summer of this year. I forget just the time.
151 I am somewhat familiar with building operations, but I should not like to make any estimate of the worth of that plant. It would be a plant that would have a high market value for a car-wheel manufacturing company, I should think. I don't know anything about what the material would cost down there to-day or anything of that kind, but the appointments inside, the cranes, the pits, the cupolas, and such things, I know about.

JOSEPH F. FORSYTHE, called as a witness on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. GURLEY — testified as follows:

My name is Joseph F. Forsythe; I am in the pig-iron business, dealer on commission in pig iron, which I have been for eight years. I have transacted business with the C. A. Treat Manufacturing Company. I attempted to sell them material when they were operating their plant at East Chicago, but did not succeed. During the course of the negotiations I tried to ascertain what the best freight rate was that I could obtain from Chicago to East Chicago, and two cents and a half a hundred was the best rate I got.

Cross-examination by Mr. BEALE:

That was about the time Mr. Treat was finishing his plant, at work at it; I could not tell just the date; I don't think I could tell the month or year without referring to it. It was about the time he was finishing up his works there.

152 CORNELIUS A. TREAT, having been recalled on behalf of the plaintiff, was further examined by Mr. COOPER and testified as follows:

Q. Mr. Treat, there is a question I neglected to ask you—that is, I don't know whether it is in your testimony or not; I thought I did. When General Torrence stated to you the arrangement that he had made, the contract running twenty years with the Chicago & Atlantic for a 83 rate, and then his company, Chicago & Calumet Terminal, would charge fifty cents to bring freight from points of connection to East Chicago and back again at the same rate, I want to ask you whether or not you relied upon that statement of his entering in on that contract.

A. I did rely upon it. I relied upon it because I did not suppose that General Torrence or any other man could afford to tell me as big a falsehood as he did in regard to it, occupying the position that he did—that of president of those companies down there. I understood those companies to be responsible companies, composed of responsible men. I consider the building alone worth what it cost for the purpose. I believe the building to be worth about $10,000 as it stood there last spring at the commencement of this suit. The building alone I would not give anything for, because it is not worth tearing down and moving away. It is not worth anything there unless we can have what he agreed to give us. I consider there is machinery and iron enough to take down and move away from there that would be worth 10,000 dollars.

153 The whole of it would sell for old material; I don't value the land. They sell some land down there for $250 an acre, and from that on up. I don't think our land—if we had no building there—I would be very willing to sell it for $100 an acre. The buildings and land and whole plant, just as it stands there, if I cannot operate it, I would be willing to take $10,000 for everything. That includes the house that I built there for the superintendent of the works, the ground on which the house stands, and the building lots, and includes everything we have got there.

Cross-examination by Mr. THOMPSON:

I am willing to take ten thousand dollars for the entire thing we have there now, provided we cannot get what we are suing for; but I will not take it under the circumstances of this suit, because I consider it worth more than the ten thousand dollars if we can operate it as a car-wheel plant. I don't consider it worth more than ten thousand dollars in the conditions as they are, and as we know them to be I will not take that for it. I will take that for it unless I can get what your client said he had for me. I have not fully ascertained that we cannot get that. I do not think the roads will give me that rate until they give it to everybody else. I ain't busted; I can wait. I am satisfied that ten thousand dollars would be a high valuation for that property if it cannot be operated under the agreement that this company made with us as to freight rates down there and from there. I think that property

would be worth a hundred thousand dollars with that written agreement carried out. In view of the present condition, all the facts known to me, everything affecting the value of that plant, that property is not worth over ten thousand dollars; but I will not name a price that I will take. I am not
154 obliged to sell that property. I will take sixty thousand dollars for it, now you have got to a point. I would prefer to consider that proposition of fifty thousand. All wheel-makers know they have to take their contracts in competition with others, and sometimes they take contracts with a different marginal profit from what they do at other times. Now, we, as wheel-makers, sometimes figure our marginal profit at twenty-five cents a wheel; at other times we will take them, when we are closely pushed, at ten cents a wheel. Now, then, when you locate a plant at East Chicago and agree to put that plant on a par with Chicago rates the highest rate of freight that a Chicago plant has to pay for this freight—local freight; switching, you may call it—would be seven cents a wheel at the highest rate that they charge. By this I mean the total of getting the product into our works and out would be seven cents a wheel. Now, then, we located at East Chicago. If we had to pay $3.50 a car down there that would amount to seven cents per wheel, and then if we had to pay three and a half dollars for the product out that would amount to five cents a wheel. That gives us at East Chicago, paying five cents a wheel, more than the Chicago plant does; but we have an advantage over the Chicago plant in this particular—we have not paid anything for our land and the *the* Chicago plant has, and that would just about balance that five cents difference. Take those things into consideration. Now, then, take a rate of five dollars a car from here to East Chicago and five dollars back. The difference in freight that we would have to pay over and above the Chicago plant would cut us entirely out when we were bidding on a margin of ten
155 cents a wheel. Five dollars a car would not be a living or profitable rate. There is a car-wheel plant that is operated for a car factory in connection with it at Pullman. It belongs to the Pullman works. I am not talking about paper car wheels. It is a part of the Pullman plant. It is not an independent one like ours. I speak of three dollars a car from here to East Chicago, and then three dollars a car from East Chicago up here; that we would have to consider in making our contracts if we were going to compete with Chicago works. It is not necessary in all cases that materials coming to East Chicago to our factory and the finished product going away should come to Chicago. It is necessary to operate a car-wheel plant, and we will start out with this as a proposition: It is necessary in order to operate a car-wheel plant that the plant shall provide itself with 800 pounds of material of various kinds to make one car wheel that will weigh 600 pounds. That we will start out with as a truism. It does not make any difference where that car-wheel plant is located; at any point. It is necessary for them to provide themselves with 800 pounds of material of various kinds, and they

can manufacture out of that material, if it is properly sorted, a car wheel that will weigh 600 pounds. We have to buy all our iron at Chicago prices with the Chicago freight added to that point. We got one little lot of iron shipped down there from the East that was put there at Chicago prices. Ever since they made East Chicago a point the freight rates from southwest points have been five cents a ton more to East Chicago than they were to Chicago. That portion of the material that comes from the East might be by a little manœuvering got in there at Chicago prices. We would have to buy that material at furnace prices in the East. We buy it where we can buy it the cheapest.

156 We have to buy that material at the furnace price and ship it ourselves and manœuver with the railroad company as to rates. Suppose we want to ship material south or east, then this rate here would not affect us. About three-quarters of the wheels we sell have to come back to Chicago. Primarily, we buy all our iron at Chicago prices. I don't think there is any product that goes into a car wheel that originates in Chicago. We get our coke from Pittsburgh altogether. We pay the Chicago prices for it, and we have never got any any less. We got one little lot of material shipped over the Wabash road and into East Chicago at Chicago rates, and then the Wabash took the rate away when the Terminal put their engines on and drove the Wabash off that line. I don't know that it was the Wabash. I made a special rate with the Wabash at one time for a little lot of iron to come up to East Chicago, and that lot of iron came to East Chicago at what they said was Chicago rates, $1.62 per ton, but from the same point to Chicago by another route I was quoted $1.50. That is the history of it. I was quoted that $1.50 by the Illinois Central line. The Illinois Central would not put freight into East Chicago at that time. I think they did afterwards, although I don't recollect that we ever had any freight come on that line. We shipped over the Chicago, Burlington & Quincy from Hannibal; it didn't connect with the Terminal. I suppose the general scope of a Belt line like that of Chicago is to do the switching from one road to another and from roads to industries from persons living on that line. I don't know that it would cheapen the Terminal switching charges at that point. I understood at the time I was negotiating with General Torrence that this Standard Steel & Iron Company had

157 responsible men behind it. I got that understanding from my son, who was in New York and who became acquainted with some of the men who represented themselves as being in connection with General Torrence in this place. Our deed for the lots was dated six months later than the one for our plant, because we didn't select the lots until that time, and we didn't ask for the deeds until then.

I knew that a three-dollar-and-a-half rate from Chicago to East Chicago, taking into consideration that portion of the freight that we wouldn't have to come here or get here, would let me live and practically give me an equal footing with any man located in Chicago, freight rates being an important element in my business. We might have a little percentage. The bulk of the pig-iron that we

used we bought in Chicago—that is, we made the bulk of our purchases of pig-iron from men who are located in Chicago. Sometimes the iron would come from away up in the Northwest. It came mainly from the Northwest and West. We received old wheels that come over the Atchison, Topeka and Santa Fe. We didn't receive any schedule as to prices. The Calumet Terminal line put on their own engines and went to doing their switching themselves, and then we had to buy those wheels, and the Atchison, Topeka & Santa Fe or other parties delivered at the crossing out here, and we paid the $3 switching rate from there down to East Chicago; $3 in addition to the Chicago rate. I think there was a shipment of old wheels that came over the Rock Island that cost $7.50 to get from Chicago over and above Chicago rate. The Rock Island and Pacific road reaches St. Paul, Minneapolis, and Northwestern points. I understood from General Torrence that he had a contract for twenty years with the Atlantic & Pacific road from
158 Chicago to East Chicago. He told me it was the rate to everybody who located an industry down on his place; it was the special rate that he and his industries had the benefit of. I could not tell you whether the contract between us was written previous to our going in there or not. I didn't see it written. He brought two copies of the contract in and handed one to me and I examined it. I don't know when it was written, where it was prepared, who prepared it, or anything about it. I didn't hear it dictated right there in the office while I was there. Whether the iron comes from Lake Superior or from Alabama or wherever it comes from, the Northwest or Southwest or West, we buy that iron at a certain price called the Chicago price, and that price has added to it the freight from the point of origin to the point of delivery at Chicago.

WILLIAM GRAVER, called as a witness on behalf of defendants, being duly sworn, was examined in chief by Mr. BEALE and testified as follows:

I reside in Englewood. I am manufacturing iron tanks at East Chicago. I located there in the summer of 1888. That was before the Treat Manufacturing Company went there. I was the first industry located there. I arranged with General Torrence to go there. I had been located in the city. I manufactured at Lima, Ohio, prior to going to East Chicago. I have had factories here in Chicago. Nearly all our products come from the East. Iron is the principal article that we consume. That comes, you may say, nearly altogether from the East, because the class of iron we use, plate iron, is not made
159 in this section of the country now. We get Chicago rates at East Chicago the same as in the city here. It is delivered at our door the same as in the city here. In my case, where I located here before, it cost me more to get my material to the works than it does at East Chicago now. It is delivered at East Chicago at the same rate as it is delivered at Chicago, to me or anybody else. My factory in Chicago was 53rd and Clark; there was a $3 switching

charge on every car I got to my place there in Chicago at 53rd and Clark, not by any particular company. This 83 rate was charged for delivering the car at my factory in Chicago in addition to the regular rate. Our products go to all parts of the United States, you might say, East, West, North, and South. We got this rate ever since we started there, which was in June, 1888, I believe; first went in there and started as soon as I got in there. We have got these rates ever since we have been there and I understand everybody else has. We generally pay by the hundred; we hardly ever get a car-load. The greatest part of it comes from the East. Plate iron is made in the South, but we have never bought any there. We get ours from the East, almost all of it. In obtaining material, such as iron, from Chicago it came over two roads and we paid two switching charges, whatever they were. I paid as high as 86 on a good many shipments shipped out and never less than 83, unless I shipped on the Rock Island, the road I was located on, and made through shipments. In making shipments out on the Rock Island to distant points on the Rock Island I paid no switching charges. I paid the regular rate; of course there were no switching charges, because I was on their road, and they took it at the regular charge at that place. I can correct that if I am allowed to do it. I couldn't
160 reach my works on those roads from the East without passing over another road. If I passed over one there was one switching charge of 83, and if I passed over two a switching charge of 86. When I made Western shipments over the Rock Island and at the point of destination there was another road; then I was charged no switching. There were switching charges on all shipments that came to me. I don't recollect of buying anything that came to me over the Rock Island. In that case they would deliver to me without crossing any other road. We pay switching charges on business we get from the East at East Chicago. I cannot give you definitely how much they run per car. I don't know.

J. D. KERSHAW, having been recalled, was further examined by Mr. THOMPSON, on behalf of the defendants, and testified as follows:

I have no detailed statement in my letter book showing whether, prior to the 1st of November, 1888, we demanded over 83 a car for freight shipped to East Chicago from Chicago. The first detailed statement I have is December 1st, according to my books. There is no detailed statement showing that I made any demand. On the books December 1st, 1888, is the first evidence I find of making such a demand. By a detailed statement I mean a statement showing the way-bills, the pro number of the way-bill and number of the car. There is nothing except simply the gross amount in several of those letters prior to that date. Bills were made and sent to them for the delivery of car-loads of freight during July, August, September, and October at 83 a car by the agent at Hammond. He would get a copy of the same authority that I had from A. S. Crane, general freight agent.

161 N. S. Bouton, a witness called on behalf of the plaintiff, being first duly sworn, was examined in chief by Mr. Cooper and testified as follows:

My full name is known here in Chicago as N. S. Bouton. I have lived here forty-odd years. I am in the foundry business, which I have been engaged in for thirty-eight years. I am mostly out of business now. I am running a foundry at Aurora and one at Decatur, Alabama. I have been engaged in the manufacture of car wheels, to the extent of one hundred thousand a year, for the whole of the thirty-eight years, more or less. I have been to East Chicago to examine the plant of the C. A. Treat Manufacturing Company prepared for the manufacture of car wheels, but I didn't know the name of the company. I was out there with Mr. Treat. I found a good plant, very well equipped; I should say able to do work economically. In the manufacture of car wheels in Chicago and vicinity the figure of freight is an important one, getting your material to your foundry from the place where you have to get it and shipping the product—your car wheels—out to the place where you have to deliver them. So far as the rates of freight affect the material, the cost, it is a large figure in it, as the profits are small. Taking that plant as I found it at East Chicago in operation, competing with Chicago manufacturers of car wheels at a rate of $3.50 per car-load lot to and from Chicago—that is, that much rate over and above Chicago prices, including freight to Chicago—that would put a manufacturer of car wheels at East Chicago as a competitor with car-wheel manufacturers in Chicago around on the Belt line. There is $3.50 a car added for delivery at the car-wheel plant of the plaintiff here,

162 The C. A. Treat Manufacturing Company, and when you are shipping the product out, if it goes to the Northwest, the Southwest, or West, it comes to Chicago, and you pay the Chicago rate plus $3.50 a car from there to Chicago. I should say any large amount—equal, for instance—that would make it something like five or six dollars a car—that is practically three dollars and a half a car—will put your profits down very low, unless you can save it in some other form, by manufacturing outside. You see three dollars and a half a car running from there in would be ordinarily about five cents a wheel. I have taken a contract once or twice from Aurora to deliver wheels here, and they cost me fifteen cents a wheel over and above the Chicago rate, which finally barred me out. A rate of $7.50 a car between Chicago and East Chicago would bar me out from any profitable manufacture unless I could get a compensation in the cost of labor and all that out there. I should suppose that that out there would be very much as it was when I went to Pullman; it would be rather against a man than in his favor. Suppose you have a manufacturer at East Chicago who is paying a seven or seven and a half dollar rate in competition with a Chicago manufacturer; the Chicago manufacturer has to pay for the ground on which his factory stands and the East Chicago manufacturer pays nothing, gets his for nothing; the inter-

ost upon your plant is a matter always to go in; it would depend upon the value of the plant and its interest account. A man has his mill at East Chicago, and his plant cost him nothing; there is no interest account there—that is, for the ground—and he is required to compete with the Chicago manufacturers at seven or seven and a half dollars a car. Suppose that plant at East Chicago is operated under this state of facts with reference to freight, that the freight rates between
163 East Chicago and all points to the Northwest, Southwest, and East are the same as to and from Chicago and those points, important points of sale, and so forth, like Omaha or Lake Superior, and the rate between Chicago and East Chicago—that means including switching charges, everything—is only three dollars and a half, and the ground is procured for nothing, the place is located in Indiana, in a country town where the taxes are low, how would the manufacturer out there stand with reference to competition with the Chicago manufacturer, two men of equal ability, one running one plant and one the other? The outside plant in that case would make a little more upon his wheels, other things being equal, and he would be an easy competitor of the Chicago manufacturer.

Cross-examination by Col. Thompson:

Supposing the rates of this East Chicago plant from Chicago to the plant was $3.50 a car and from the plant to Chicago was $3.50 a car, making in all $7—my rate from Aurora to Chicago was $6 and that barred me out—I would not undertake the outside if I had such a rate as that; I would not go outside; I would stay in the city; at the rate you have mentioned I would stay in the city. In other words, I would not take that as a competing point against a manufacturer of wheels doing business in Chicago if the rate was $3.50 from there to Chicago and $3.50 the other way; I would not take that plant as a gift under those circumstances, plant and all.

Redirect examination by Mr. Cooper:

Here in Chicago, as a rule, I have to pay for switching charge $2 on the West Side. I owned the establishment which is now run by the Wells & French Company; I sold it to them. When you buy here for any yard, if it is on the line of the road that brings
164 it here, they deliver it without any charges, but if it is on another road, then they have got a certain fixed charge. Most of the roads on the West Side are $2. For instance, I was on Quarry street and the Alton road—my coke and a great deal of stuff came in from the East—and there any road does its own switching, and there they charge from the Pennsylvania road more than $2, but on the West Side it is $2.

The reason I say that rate would bar us out is, since the profit that we make on wheels is very small, and you now only make a profit by making a large number of wheels, if you make a large number of wheels you can make them as cheap as a less number without any more extra labor, 200 wheels as cheap as 50 or 20 wheels, and therefore you make a large quantity of wheels and the

prices are down so low that if you have any extra freight bills they spoil the whole profit. The difference between the rate that a man out there would have to pay and a man in Chicago would be just a dollar and a half a car each way, making $3. I said before, being outside and shipping away, then you have an advantage, but being inside and shipping for the general trade inside, you are at a disadvantage. But where there is a demand for wheels, where you have a supply of wheels outside of Chicago, with the same rate as Chicago, then I say I would prefer that place out there.

Recross-examination by Mr. THOMPSON:

I had car-wheels out here on the south side, where I received freight from any road other than that upon which my plant was located; the switching charges were $2 for the car one way, whether it was loaded or not—that is, we had to pay $3.50 down and $3.50 back. The switching charge, where a car comes in loaded, is $2; then, when we sent the car out loaded, if it is the same car, it is
165 $2. Where we are shipping car wheels, for instance, to Omaha or any distant point West and the road over which we ship connects with our works through a belt line the rule is with reference to the road that does the carrying to Omaha. We always had to pay a switching charge on the belt line—I did at Pullman—to get it on the line it was to go on or to receive it from the line it came on. The main line did not absorb that. I do not know what the rule is now. I built those works in Pullman in 1881 and operated them until 1885. When I spoke of the three dollar and a half rate to Chicago, both ways—that is, down to East Chicago from Chicago and then from East Chicago back again—I paid $3.50 to get the car-load down—that is to say, suppose we got a car-load of iron down there at the car-wheel works and it cost us the Chicago rate of $3.50, that is all we pay on that iron. Then, when we want to send those car wheels out, we send them out at the same rate as the Chicago rate, but if we send them into Chicago we pay $3.50.

Mr. BEALE: I ask the court to instruct the jury to render a verdict for the defendant on the points of law if the court will hear us after having called Mr. Graver.

Mr. COOPER: We do not object on that ground.

The COURT: I will let you put in your evidence, and then you can make your motion again.

Mr. THOMPSON: The motion will stand as though it was put in at the closing of the plaintiff's case?

The COURT: Yes.

Mr. COOPER: We do not make any point on that. We are content the court should dispose of the motion after the testimony is all in.

166 JOSEPH T. TORRENCE, one of the defendants, called as a witness on behalf of the defendants, being duly sworn, was examined in chief by Mr. BEALE and testified as follows:

My name is Joseph T. Torrence. I reside in Chicago. I was president of the Standard Steel & Iron Company, the defendant in

this case. I don't know whether I am to-day or not. It is understood I am going out of office. It has been understood so for about a month or more. I was president at the time this suit was commenced. There is a monthly meeting in New York to-day and they may elect another president. I have also been president of the Calumet Canal & Improvement Company and of the Chicago & Calumet Terminal Railway Company. I am not at present president of the railway company. The interests of these corporations are not at all identical, except in the two land companies. They are somewhat mixed up. There were persons interested in one corporation who would not be in either of the others at all. The negotiations opened between the Standard Steel & Iron Company and the plaintiff in this case respecting the location of the plaintiff or of Mr. Treat on the land of the Standard Steel & Iron Company perhaps two or three months before the date of that contract. I would have to look at that to see; that is September 11, 1888. The first I knew of it there was a young gentleman came into our office who was a witness on the stand here yesterday. I think his name is Mr. Surghnor. He said he was a friend of Mr. Treat's, in Hannibal, and Mr. Treat wanted to move his works from Hannibal to Chicago, and he said he told him on the train that he thought he ought to open negotiations with us for a location at East Chicago. He said if we would give him maps and stuff he would
167 write to him. We gave him maps showing the location, and he did write to him. I do not think I subsequently wrote to the C. A. Treat Manufacturing Company. I think our secretary, Mr. James Prentiss, wrote a letter to Mr. Treat. Some letter was written to the C. A. Treat Manufacturing Company, either by me or Mr. Prentiss. It was a company letter, at all events, and if it was signed by him as secretary it would be the same as if it was signed by me as president. Mr. Treat came into the office some little time after that and stated his business, and I made an appointment and went with him to East Chicago on the following day, I think. I think he came in with this real-estate gentlemen, Mr. Surghnor. As near as I can recollect, there was no one else there, unless it was Mr. Prentiss or perhaps Marshall Lapham, at that first interview. Our offices were in the Rookery building. We had a number of offices there and a number of clerks and officers of these corporations; probably eight or ten of them at that time. Mr. Treat said to me that he had been thinking for some time of moving his works from Hannibal to Chicago, and was up there with a view to looking over the ground to pick a location out, I believe, and of course I was very desirous to have him locate at East Chicago and took him around the next day to show him the place. I don't know that anything was said at that first meeting about freight rates. It was a short interview—may have been a half hour—resulting in an appointment for the next day. The next day we went to East Chicago. I recollect it as being on a very early train, because I stopped to get this real-estate man on my way over, and we took the train

at 41st or 43rd St. It must have been along not far from
168 6 o'clock in the morning. We were there quite a portion of the day; returned some time during the afternoon. I don't remember how the trains run during that time. We three men were together, practically, all the time. There may have been others, but I don't remember that there were. I told Mr. Treat that I thought we had a great many advantages at East Chicago and would have when the Belt line was completed around the city, that I was then building, and, among others, I told him I had had a contract with the Atlantic road for three dollars to the Indiana State line; that I hoped to get that contract renewed to carry material to East Chicago, and, in fact, they were doing it then, I believed, at that price, adding what they had to pay for track service, which was a half a dollar a car at that time, I think, making a total of three dollars and a half. I don't recollect anything further, excepting that I said to him that when the Belt railroad was completed, with all the different roads running from the different parts of the country into Chicago, it was my opinion that we would have the Chicago rate. I had talked with several railroad men and it was the universal custom by railroads (while they did not always do it publicly) to absorb the switching charge. I had a contract myself, personally, which I spoke to him about, to the Indiana State line on the Chicago & Atlantic road. It had been made a year or two before that time, I think—probably two or three years before that—running for twenty years, in which they agreed to deliver the material. I told Mr. Treat I had had negotiations and was still continuing to negotiate with Mr. Benedict, in New York, and Mr. Atterbury, the general counsel of the Atlantic road, for a new
contract running to the Chicago & Calumet Terminal
169 railroad, and the question of how they were going to avoid the interstate law was being examined into on the short haul, and it had been decided by Mr. Atterbury that we could make a contract for an interchange of business with the Chicago & Calumet Terminal railroad between Blue island, all points east of Blue island to Lake Michigan, which would include East Chicago, and that contract, if it had been executed and completed, would be $2.50 for the Atlantic road and the trackage, which would never exceed a dollar a car on the Terminal railroad's tracks when the work was done by the Atlantic's engines; that is all the conversation that I can recollect that we had at that time. I don't think there was any decision arrived at that day. I think we came back and Mr. Treat came back and talked with different people and came back again some time after that. The next time I saw him was, perhaps, a month or two before the execution of the contract. I don't remember positively. I may have talked with this gentleman referred to—this real-estate man—in the meantime. I don't remember positively having any conversation in which anything material was said. The next conversation was with Mr. James Treat, on his way from New York; not with Mr. C. A. Treat; it was some time, I think, after his father had seen me the first time. I could not say positively as to that, but I think it was. We had quite a

little conversation at our offices here in Chicago; it was not a full discussion, but just a brief interview, as I recollect it, at that time. I have no recollection of it further than that we had an interview and talked over the matter of their bringing their Hannibal works to Chicago. It appears he was urging his father to move the works to Chicago, and I think he may have stated to me the number of men they
170 employed, &c., &c., and he may have asked me. I don't recollect. According to my present recollection, nothing was said at that interview on the subject of freight rates or a contract for freight rates. My next interview was with Mr. C. A. Treat at our office, in Chicago. My recollection is that he returned to my office after some time and said he had decided to go down and look the ground over again, and probably would come to some conclusion about his locating. He said he had had a talk with Mr. John B. Carson and with others. I don't remember any of the others particularly, but I remember John B. Carson because I am well acquainted with him. I remember it because he said Mr. Carson advised him not to build another car works up in this vicinity; that there were too many on the line of his road now, and he could not give him any business if he did do it. I don't recollect of anything just at that immediate time about freight rates or a contract that I had, but later, during our negotiations, whether it occurred that day or the next day, I told him it was simply impossible for me to contract to furnish any given rate of freight to East Chicago for several reasons. In the first place, if the Atlantic road went into the hands of a receiver, which it might do, any contract I might make with them might be declared off, and I could not be put in that position. I said to him also that the geographical position of East Chicago, I believed, when the Belt road was completed, would be sufficient to take care of him, as well as other people in the suburban towns. My recollection is this interview took place the day before the contract was executed. I don't think the Belt road (the Terminal road at that time) was built further than the State line at that time. It was not built from the lake shore. As I recollect, it was from East Chicago to the
171 Indiana State line, and there connected with the Atlantic road or the Western Indiana, which the Atlantic used. I think I visited East Chicago with Mr. Treat the last time he was in Chicago before he signed the contract, the time of these last interviews. I don't recollect what took place on the subject of the rate of freight until we came to execute the contract on September 11. I think it was executed on the very day we agreed on it, right there on the day it bears date, at my office. Mr. Treat and I talked over the situation, and I dictated the substance of the contract to a stenographer. I am not positive now whether or not I had him take it over to Mr. Monroe, who was our attorney then in matters of this kind, to examine, but at any rate the contract was typewritten and executed by Mr. Treat and myself and the secretary, and we discussed the subject of rates of freight. I told him I would put in a clause there that would give him the benefit of any rate of freight that we had then or thereafter would acquire, but I could guarantee no rate of freight at any price; if his coming down there depended

on that it would have to drop, because I could not guarantee it at all. This was said during the dictation and after the contract was fetched back to be executed. There was some little talk had there about it. The secretary was present, and I am not so positive, but I think Mr. Tood, who was the treasurer of the company, and the secretary and Mr. Lapham, who was the accountant, and the stenographer. The secretary was Mr. James S. Prentiss. I do not recollect that we had any further conversation at that meeting than what I have already stated. I was very positive about my position on the freight rate because I had had too much to do with railroads. Myself, Mr. Towle, and Mr. Young had a contract
172 with the Michigan Central which was to be taken down in ten years. I have not the written instrument now nor a copy of it and no interest in it now. I have not had any interest in it since I met Mr. Treat, to the best of my knowledge. I do not know where the original is. It has not been in my possession for a year or more; not since I met Mr. Treat. The tract of land known commonly as the Forsythe tract of land, embodying, as I recollect it, between seven and eight thousand acres of land, was in litigation, and I organized and was going to build a railroad around the city of Chicago across to Lake Michigan.

Mr. BEALE: Were you and Mr. Towle and Mr. James N. Young the parties who originally started the Standard Iron & Steel Company and who owned the thousand acres of land?

Objected to. Objection overruled.

A. I think we were. I never heard Mr. Treat claim, after the execution of this contract, that we had guaranteed him a freight rate until some little time before this lawsuit commenced. He complained constantly about freight rates from the first car he got. I could not recall when the freight complaint first came. He was in the office a great many times. He dropped in and talked with me occasionally, and we would discuss the trouble in getting railroads to sometimes do as they agreed to. I never said anything further to him on the subject of a guaranteed freight rate, because I was positive I would not guarantee a freight rate. I said to him at different times when he complained, "Well, Mr. Treat, of course, we could not help it; we could not guarantee anything; we will do the best we can; I will do everything I can to assist in getting the rates of freight for the benefit of the town, not alone for you,
173 but for the benefit of everybody and for ourselves." I could not in any way guarantee any rates of freight. If I had agreed to guarantee a rate of freight I would have to put it right in the contract where it belonged. You have just called my attention to a copy of a letter in my letter-press copy book, under date of May 28th, 1888, addressed to Messrs. C. A. Treat Manufacturing Company and signed by the Calumet Canal & Improvement Company, James S. Prentiss, secretary. To the best of my recollection, that is the letter to which I refer. It looks like his writing, signature and everything. I should think that is the letter. I know this letter was sent. I know it because my attention was called to

it. I did not send it or see it sent. I was told it was sent and shown a copy of it. That is all I know about it. I don't recollect of any railroads to East Chicago in September, 1888, excepting that the Calumet Terminal had built from the State line up to East Chicago. I don't know that the Pennsylvania road had got in there yet or not at that time. I don't remember whether it was in September, 1888, or not. If the Pennsylvania railroad had got in there it was the only one besides the Calumet Terminal. Before we signed the contract I said to Mr. Treat, as I stated before, that from competitive points any distance away from Chicago that the Chicago rate would be applied in it as fast as the terminal road would reach that line, and I thought a good many of them would absorb the switching charge before that time as fast as the Calumet Terminal crossed them. There is the point (indicating)—the point at which the track of the Calumet Terminal for East Chicago left the Chicago & Atlantic. That (indicating) is the State line just on the Illinois side of the Indiana State line, perhaps not more than
171 a length or two of the switch. That (indicating) is the State line, and that is the point (indicating) where the Calumet Terminal switch left the Western Indiana, which was run over the Atlantic. The State line is running north and south there, and the Chicago & Atlantic road runs a little southeast diagonally across the State line southeast, and the Calumet Terminal tracks for East Chicago join the Chicago & Atlantic a little north of the junction just over on the Illinois side. The Hammond switch track, with reference to that point, is about a quarter of a mile further east—that is, further from Chicago in Indiana; I should think not less than a quarter of a mile from the switch to East Chicago—further away from Chicago. I don't remember what the scale of this map is; I am judging from a knowledge of the locality.

Counsel for plaintiff offered in evidence a contract between the Chicago Steel Manufacturing Company and others and the Chicago and Atlantic Railroad Company with the map thereto attached.

Mr. COOPER: The offer of a contract in evidence is objected to by the plaintiff as being no justification of the truth of the statements made by the defendant Torrence to the plaintiff.

The COURT: I will let it in subject to the objection.

Counsel for plaintiff read said contract as follows:

"This agreement made this 15th day of February, 1887, between the Chicago Steel Manufacturing Company and Marcus M. Towle of the city of Hammond, in the county of Lake and State of Indiana, also James N. Young of Washington Heights in — county of Cook and State of Illinois, and Joseph T. Torrence of the city of Chicago and State of Illinois, parties of the first part, and the Chicago & Atlantic Railroad Company, party of the second part,
172 witnesseth: That whereas, parties of the first part owning and controlling certain manufacturing industries in Hoffman's addition to the city of Hammond, have acquired rights to lay, maintain and operate railway tracks on and along River street in

said city, including the rights to extend the so-called M. M. Towle Distillery track to the grounds of the Chicago Steel Manufacturing Company, as appears upon a map hereto annexed."

(The grounds of the Chicago Steel Manufacturing Company are not in East Chicago; from the line to East Chicago is, I suppose, a mile. Their works are up there within a block, maybe two, from that main line (indicating on plat) south of the main line of the Chicago & Calumet Terminal railroad. I think there is about a mile of track to get up to it from the State line east. I could not guess at what distance it would be in air line. I had to run away round there. This (indicating) is the Terminal and here is East Chicago.)

"And whereas said parties or some of them, control or own said Distillery track to its present connection with the railroad of the second party, and have the right to grant the use thereof to others.

"Now, in consideration of the premises, the parties of the first part hereby grant to the second party the right to construct and extension of said Distillery track from the present easterly terminus about five hundred feet to the westerly line of the ground of the Chicago Steel Manufacturing Company, there connecting with the tracks of said company upon its own grounds.

The parties of the first part will furnish all necessary rights of way for such extension and put the second party in immediate possession thereof for the purposes aforesaid. The parties
176 of the first part further grant to the second party the right to use jointly and equally the said first parties the said Distillery track, completed and extended as above as well as any and all other tracks hereafter owned or controlled by them or either of them, leading to or connecting with their works in said the city of Hammond, free of charge and expense, and will at at all times keep and maintain all such tracks in good order and condition for the passage of cars and engines thereover.

The parties of the second part agree that they will at once proceed to construct and complete as soon as practicable the extension of said Distillery track to a connection with the tracks upon the grounds of the Chicago Steel Manufacturing Company upon and along the right of way furnished as aforesaid and as shown upon the map attached. That they will in like manner lay upon the grounds of said Chicago Steel Company one thousand feet of single track to be located by the said company and the engineer of the second part, with a view to accommodate the business of said company, provided however, that in the event said second party does not find the laying of said track profitable, it may after the expiration of two years from this date, take up and remove said track unless said company shall elect to purchase the same at its actual cost. Such removal or purchase shall not impair or affect in any way the remaining provisions of this contract.

That they will transfer cars for all and each of the first parties and for any industries in which they or either of them may be in-

terested, to and from their works to Hammond, situated upon the tracks aforesaid, at the following rates.

I. To and from Chicago at $3 per car of twenty gross tons, and no charge on empties when they have been loaded one way

177 P. To and from Chicago and Rock Island Junction at Stony island and to and from the Illinois Central junction near Stony island, at $1.50 per car of twenty gross tons and no charge on empties when loaded one way P. The party of the second part shall have the right to use all tracks of the Chicago Steel Manufacturing Company now or hereafter laid upon the grounds of said company, jointly and equally with said company and other railroads entering the same.

No use of the Distillery track and extension shall be granted to any railroad competing with the second party, except and only upon the condition that said second party shall be granted by such other railroads the like privilege of using its tracks now or hereafter connecting with or leading to the works of said first parties or any of them P. That parties of the first part will procure such additional ordinances or grants from the city of Hammond as may be found necessary to enable the second party to lay down or use any railroad tracks contemplated in this contract.

This agreement shall continue until the 15th day of February in the year 1907 whereupon the party of the second part may take up and remove the tracks laid by it hereunder, unless the first parties shall elect to purchase and shall pay for the same the actual cost thereof.

In witness whereof, &c., &c.

Signed by the parties.

Mr. Treat, prior to the execution of the contract which he made with the Standard Steel & Iron Company, knew of this contract. My knowledge is that I had a copy in my desk, which I handed him to look over; that was the last time he was in my office prior to

178 making that contract. The conversation referring to his meeting with John B. Carson was one of the things that brought it up and talk of freights. I handed him one of the copies to glance over, and he sat in my office and did so. I don't know whether he read it or not, but he had it in his hands. I have a recollection respecting the allowance or credit of twenty dollars made by our company to Mr. Treat's company some time after the execution of this contract of September 11; I cannot recall the dates. This paper handed me is November 30th, 1888. I saw it when it was approved. It was not approved by my name, although it was approved by the treasurer for me. I didn't write it. I remember the circumstance, but I could not exactly state the dates of this allowance. I remember the circumstances, and they are substantially these: There was a great deal of complaint about different roads shipping down there, and Mr. Treat was in my office and made a complaint. I took young Mr. Treat and went over to Mr. McKay's office of the Michigan Central. I had a talk previous with Mr. Ledyard about freight rates. Mr. Ledyard is the presi-

dent of the Michigan Central. I went over there into Mr. McKay's office. Mr. Treat took a seat in the outer office. I went into Mr. McKay's office and there had some conversation with him about the rate of freight, and he agreed if I would allow them to come onto the Calumet Terminal tracks in Illinois—to switch by the way of what is known as Smith's ice-house. I understood him to say that I could notify them that the rate would be $3 to East Chicago, but, of course, we would have to get the track service some other way. I so notified Mr. Treat and the other industries that I had made that arrangement: I think in writing. I cannot recall the date of that notification without seeing it. I notified the plaintiff and other industries there. (Letter shown witness.) I think
179 that is the letter that I wrote them.

"CHICAGO, ILL., *November* 22, 1888.

"C. A. Treat car-wheel works, 729 Rookery building.

"GENTLEMEN: I have made arrangements with the Michigan Central for all business between Chicago and East Chicago, $3 a car. In addition to this there will be a charge of fifty cents per car. Please order all material coming forward consigned to the Michigan Central road from Chicago to be delivered at East Chicago on our tracks, and you will have no more bother about your rate of freights.

"Please regard this as strictly confidential.

"Yours truly, JOSEPH T. TORRENCE, *President*."

I sent those letters. The reason, as I understood from him at that time, for not making it public was that it would affect shipments to Hammond, as it would have to go past Hammond to East Chicago and didn't want that rate of freight to all the people at Hammond. Now, that was my reason for writing that. Some days later, Mr. Treat came in and said those people have charged $7 or $8, whatever it was. I don't remember now. The Michigan Central people and I says, "How many cars is shipped?" Then I wrote Mr. McKay a letter, and Mr. McKay answered me back that Mr. Ledyard wouldn't consent to the rate of $3 a car to East Chicago. I said, "Mr. Treat has shipped cars, under my instructions, that way; the Standard Steel & Iron Company will simply pay the difference." I gave him credit for it in this voucher. That voucher is a part of it. At that time I didn't see that voucher. I talked about it at that time. I gave instructions
180 in my office to have him given credit for this twenty dollars, the difference on five cars, as I understood it to be. I understood it most distinctly that it was the Michigan Central over which the cars had gone. I don't know anything about whether this voucher was ever shown to Mr. Treat. I know that when the young man showed it to me I told him I wanted that entry on that voucher and it was understood that that hadn't anything to do with guaranteeing rates of freight; that I had made a mistake according to Mr. McKay's statement which I was willing to see Mr. Treat paid for. I don't know that I recollect anything that occurred at that

date or subsequently with regard to this credit. It is possible a bill was presented to Mr. Treat showing this credit, but I don't remember. Mr. J. S. Beck made the contract with the Calumet Terminal line, with the various trunk lines coming to Chicago from the various points here after the road was constructed. Mr. Beck had charge of the freight altogether. I had conversations with officers of some of these various roads before Mr. Beck's time. I had a conversation with Paul Morton, of the Burlington road; rather I called on Mr. Morton and left word what I wanted and he called on me and wrote a note, either left a note on my desk or sent a letter. I can't find the letter. He stated in that——

Objected to. Objection sustained.

Cross-examination — Mr. GURLEY:

I told Mr. Treat that I had had a contract with the Chicago & Atlantic at the rate of 83 per car to the State line. I am referring now to the first interview in which I told him anything about freight rate. At that time I told him with whom that contract was; as I recollect it I did. I referred to the contract intro-
181 duced in evidence; that is the only contract I had. I don't recollect that I said anything to him at that time about any other contract with any other road, because I hadn't anything at that time. I was negotiating, but hadn't got it. I don't know that I did state to him at that time that I had had a contract with another road before the Chicago & Atlantic. I don't know that I did, but I may have stated about this Michigan Central. I don't recollect. I never stated to him at that interview or any other interview prior to the signing of the contract that the Standard Steel & Iron Company had a contract with the Chicago & Atlantic.

Q. Following up these statements in reference to this Hammond contract, so called, you say you showed him the contract?

A. Yes, sir. I don't know whether or not he read it. He had it in his possession. Referring to that Hammond contract, the Hammond switch at that time connected with the Calumet Terminal—no, not the Hammond switch, the switch running to East Chicago, and they had been recognizing that contract. My recollection is it connected with the Chicago & Calumet Terminal—the Hammond switch which has been the subject of a conversation, which has been in evidence—at the east end; not where it joined the Chicago & Atlantic, but at the other end; they do now and I think they did then, north of the steel works, as they do now. I haven't been there for several months, but they did when I left the road.

Q. Did you understand at that time that industries doing business at East Chicago would have the benefit of that contract between yourself and the Chicago & Atlantic—yourself, the steel works, Young & Towle?

A. I understood at that time that industries——

(Question read.)

A. I think they were doing business at that time.

182 Mr. BEALE: Are you asking him to construe that particular contract or whether he was to have the benefit of that?

Mr. GURLEY: No, sir; whether he made that representation in good faith; it is evident what I want. Allow me to call your attention to this clause in question, "That they (this is the Chicago & Atlantic) will transfer cars for all and each of the first parties."

Mr. COOPER: That is, you three?

Mr. GURLEY: Four parties, the steel works, Towle, Young, and yourself.

Mr. BEALE: Or either of them.

Mr. GURLEY: "And for any industries in which they or either of them may be interested, to and from their works at Hammond, situate upon the tracks aforesaid."

A. Yes, sir; I understand that. The way this contract read I understood that industries at East Chicago were to have the same kind of a contract, but not that particular contract. I believed the parties would have the benefit of the contract while that was in operation, while we were getting a new one, because we were shipping on that and paying $3 a car. We were shipping to East Chicago then and paying $3 a car. I didn't believe at that time, when the Chicago & Atlantic discovered that we were shipping to others at East Chicago under that contract, that they would stop it. I said in some of my conversations with Mr. Treat before the execution of this contract—I told him that I wouldn't guarantee any rates. I said that one of the reasons was because the Chicago & Atlantic might get into the hands of a receiver. I heard a great deal of talk at that time about the Chicago & Atlantic going into the hands of a receiver and had for some time. I mentioned
183 that as one reason to Mr. Treat, that we would not guarantee any freight rates, and — that reason along with others I wouldn't guarantee any rate with any railroad. I am sure I spoke of that road going into the hands of a receiver in relation to making a new contract.

Q. Allow me to call your attention to a clause in the contract between Mr. Treat and your company: "The said party of the second part (that is, your company) also covenants and agrees upon the performance of the above undertaking by the said party of the first part (Treat) to give the party of the first part the benefit of any and all contracts for rates of freight which they now have or may hereafter acquire." What contract did you refer to in speaking of contracts which "they now have"?

A. I referred to the rates of freight we were getting in there. There was no contract. If I go into a railroad office to-day and the freight agent names me a $5 rate to Blue Island I call that a contract until he rescinds it. In other words, I mean a temporary arrangement that I had; and from the talk I had with President Benedict and Mr. Atterbury I had every reason to believe that we would get that contract for a term of years between the railroads that would take care of all industries between——

Q. That is the contract that you speak of "that we now have"?

A. No, sir. The contract that they might have, the benefit all industries might have. I don't know whether Mr. Treat read that contract or not. I would not know whether our company ever presented to Mr. Treat a current account containing charges of our company against the Treat Manufacturing Company. I might, but I don't recollect it. Marshall Lapham would know it. I do
184 not remember Mr. Treat ever showing me a bill rendered by our company against his company—an account current—but he might have done so. I don't remember his showing me a bill and his objecting that we had not given him credit for certain excess in freight rates that he had paid. I did hear Mr. Treat speak of the bill which he showed me, but I don't recollect his showing that bill to me.

Q. Are you now willing to testify that the matter of twenty dollars included in the voucher which has been referred to here referred to Michigan Central freight rates and not Chicago & Atlantic freight rates?

A. That is as I understood it and understand it now, but I didn't look at any bills or vouchers. I only done it by talking to the clerk when he came to me and talking about it on the street, to the best of my knowledge, and I understood it referred to the Michigan Central excess. I remember the occasion when we went to East Chicago, when Mr. Forsythe accompanied us from Sheffield. I do not recollect that the question of freight rates was discussed between us in the presence and hearing of Mr. Forsythe; I don't remember that it was; it may have been. Our only claim for a contract for freight rates was this Hammond contract, if it was talked of there. If it was talked of, that was the only contract I claimed to have, the only one I had personally to the State line. The Standard Steel & Iron Company were in no way interested in this Hammond contract, except that I was president of the Steel & Iron Company still, and they were shipping under that bill to me more than—the general freight agent said he would let that go until an
185 arrangement was made. I know Mr. E. L. Lamb; he is a foundryman; has a foundry. He has been in several places. The last I have known of Mr. Lamb is that he is connected with a foundry in some way, I think, for a few months at East Chicago. I believe the foundry burned down. Some days ago I was in New York and heard that the foundry had burned down.

Q. I want to ask you whether on or about the 8th day of October, 1890, you said to Mr. Lamb in your office that you didn't want him (Lamb) under any circumstances to have any communications with either Jim Treat or Frank Felt.

A. I never said anything of the kind.

Q. You say you didn't?

A. I swear positively I didn't say that.

Q. I will ask you whether or not you didn't swear at that same talk, on the 8th day of October in your office, to Mr. Lamb that he (Lamb) knew there had been no rate of freight named in the arrangement between you, your company, and the C. A. Treat Manufacturing Company or C. A. Treat, and that he (Lamb) was in your

office when the thing was talked over, and that you should rely on him as a witness to that effect.

A. Never in my life.

Q. Never?

A. Positively never did; never talked with him about it.

Q. Did you ever tell James W. Treat that the Hammond contract was the contract you had in mind?

A. I could not say positively that I did, but my recollection is—well, I can't say that I did tell it to Jim Treat positively. I went out of the works there at Hammond in which I was associated and out of the association with Mr. Towle, Young, and the steel works, it seems to me, a few months before; maybe I had started at East Chicago before I went out. It is difficult for me to remem-
186 ber dates now of our starting at East Chicago. It was about the date of the filing of the articles of incorporation of the Standard Steel & Iron Company and the railroad company. I think it was in 1887.

Q. So you really went out of the association with these gentlemen under this contract, had sold out under the Hammond contract what is called the Towle contract, in 1887?

A. No, sir; I have not sold out yet under that.

Q. You sold out all your interest there?

A. No, sir.

Q. What interest did you have?

A. They were a stock interest in the company. I went out of the management of it because we leased the works and afterwards I sold out my interest. As I recollect Mr. Towle leased the works for two or three years or such a matter, but I am not positive about it. I had stock in the company.

Q. I want to ask you, in order to get that Hammond contract from the railroad company what consideration did you and *and* those gentlemen associated with you in the works give to the Chicago & Atlantic Railroad Company?

Objected to by counsel for defendant as immaterial.

The Court: It is enough if he gave them a consideration which satisfied them.

A. I can explain it to you. You are thinking of the Michigan Central.

Mr. Cooper: No; I am not. There was no consideration other than what you see in that paper there?

A. None that I know of. We granted to the railroad company the right to construct an extension of the Pittsburgh track from its present easterly terminus and about five hundred feet to the westerly line of the Standard Steel & Iron
187 Company's works, there connecting with the track of said company. It says so in there; that didn't amount to anything; it was not considered so. They wanted the business. There was a 83 rate before that contract to Hammond and had been right along with the Pittsburgh. I said that there were persons

interested in the railway company that were not in the two land companies; it would be impossible for me to tell you the persons who were interested in the land companies. Those principally interested were John S. Kennedy, J. Kennedy Todd, Mr. Melville, Mr. Reynolds, and Mr. Evans. I do not think Mr. McCook's share of the stock ever stood in his name. I don't know whether he was interested or not. I know he helped me to make the settlement as attorney. The same persons I have mentioned were interested in the railway company and there were others interested in the railway company.

By saying I could not guarantee a freight rate I mean I couldn't guarantee the railroad company would take a car of freight to Hammond at $100.00 a car.

Q. Did you understand by the word "guarantee" that you couldn't guarantee freight rates? Did you understand it to be the same as that you couldn't make a statement that you had certain freight rates?

A. That is what I meant; I meant that I couldn't guarantee that railroad company would take freight at any rate. I couldn't guarantee it and was very specific in that a dozen times. These maps were got up by the engineers of the Calumet Land & Improvement Company and myself, under the engineer's direction. Probably I directed the engineer as president of the company. Lots of people had to do with the getting up of those maps; I don't know whether I did or not.

Q. Look at that (handing witness a map); you are familiar with that?

188 A. Yes, sir; perfectly familiar. That was when we laid out the town of East Chicago, in 1887—possibly 1888. I couldn't say how early it was in 1888. It might have been late in 1888 before we got to it.

Q. You gave these maps out to the different persons there?

A. The different officers of the company gave these maps out to the different persons under the direction of the directors, the secretary largely. I directed him, with the consent of the board of directors. It was by my direction as president. It was with my consent, but I don't know that I gave special direction. I suppose that I have given out a thousand.

Mr. BEALE: We offer in evidence this copy of the letter that you have already seen. Please look at that letter and see if you received that letter or not.

A. Yes, sir; I received it.

Q. State from whom, to whom, and date of this letter.

A. It is from Mr. McKay, of the Michigan Central road.

Mr. COOPER: Oh, no.

A. Is not that the one?

Mr. ATTERBURY: I have not seen it for years.

Counsel for defendants offers in evidence the letter referred to.

Objection by counsel for plaintiff. Objection overruled by the court; to which ruling of the court counsel for plaintiff then and there duly excepted.

I can explain that negotiation.

Q. I will read this. It is dated March 8th, 1887.

"Gen. Joseph T. Torrence, Chicago, Ill.

MY DEAR GENERAL: I inclose you draft of proposed con-
189. tract as prepared by us yesterday. Mr. Benedict objects to the provision for dividing between the companies the expense of maintaining the crossing and signal men and station; otherwise I think he will approve it.

He will telegraph you in a day or so.

Yours, &c., C. L. ATTERBURY."

Mr. Atterbury was the general counsel, as I understand it, of the Chicago & Atlantic road in New York; Mr. Benedict was president. There was a contract agreed upon between Mr. Atterbury, Mr. Benedict, myself, and Mr. Crane, the general freight agent. They telegraphed Mr. Crane to go to New York; he came to New York, and we all agreed there on a contract. Mr. Benedict said that he would not want to sign that without the approval of his local attorney in Chicago and his manager. It was sent out here, as I understood it, and objected to by Mr. Johnson, the local counsel here, as interfering with the interstate-commerce law, and I received a letter from Mr. Johnson, which ought to be here, stating his objections; hence the contract was not carried out, but was pending some time.

Mr. COOPER: You mean it was not executed?

A. It was not executed; and I saw Mr. Atterbury after that, and he said he thought it was foolish; that he would like——

Objected to.

It may have been abandoned temporarily upon the report of Mr. Johnson, but Mr. Atterbury and I took it up again. It was alive the last time I talked with Mr. Atterbury before I sold the Terminal road. Mr. Thomas, who was on the stand, reported that it would have been carried out if he had been in it as manager. There was a difference of opinion on the law between Mr. Atter-
bury and Mr. Johnson. I saw Mr. Lamb in my office not a
190. great while ago, but I had some sharp words about wanting more land to rebuild that foundry that burned down. I don't think I had any other conversation with him for a long time—six months or a year—not to amount to anything. I do not think I have had the conversation referred to by Mr. Cooper. My recollection is, he came into the office and wanted fifty feet; wanted to know if the company would donate some land; but I knew his utter irresponsibility to carry out any contract; I wouldn't talk with him. I said if he had any responsible party to rebuild the foundry, to bring them in, but I wouldn't talk with him. I was a little sharp with him. I don't recollect having had a conversation with James Treat. I have stated all my recollection on that in cross-examination.

Mr. COOPER: Did you receive any letter from Mr. Crane, the freight agent?

A. I had a letter from Mr. Crane, the freight agent, about location, I think. I don't know whether that letter is here or not.

Q. In preparing for the trial of this case have you looked for any letter from Mr. Crane about freight rates?

A. I haven't looked for anything. Mr. Beale and the clersk did that. I di-n't do it at all.

Q. Did they show y-u any that they had found?

A. You have not shown me any, Mr. Beale, have you?

Mr. BEALE: I haven't received any. I have inquired for every letter touching on the case and none can be found. Wasn't it your claim to the Chicago & Atlantic people that under this switch contract—this distillery-switch contract, they were bound to take the freight for East Chicago industries as far as the State line?

A. Certainly, for any industries that I had connections for, that was my understanding of it.

191 Mr. COOPER: That was your understanding of it?

A. Yes, sir.

JAMES S. PRENTISS, called as a witness on behalf of defendant and being duly sworn, was examined in chief by Mr. BEALE and testified as follows:

My name is James S. Prentiss. I reside in Chicago. I was connected with the Standard Steel and Iron Company, but am not now. I have now no connection with the company whatever. I was secretary of the Standard Steel & Iron Company from its organization up to July, 1889, but have no connection with it now. The first knowledge I had on the C. A. Treat Manufacturing Company contract was when Mr. Surghnor came to me and gave me the address of the C. A. Treat Manufacturing Company, saying that they were looking for a site. Mr. Surghnor was not an employé of the company, not to my knowledge, and in no way connected with it.

Q. What conversations at any time occurred in your presence, in the office of the Standard Steel & Iron Company or elsewhere, between General Torrence and Mr. Treat in which the subject of freight rates was mentioned? When was the first one you can recall, if any?

A. The General told me he had a contract—this was, probably, in September, about the time the contract was made—in the office of the company. At the time this contract was dictated I was present. The stenographer, Mr. Lapham, and, I think, Mr. Todd, General Torrence, and myself were there and Mr. Treat alone. Well, General Torrence told me, I believe, in discussing the matter of freight rates, that he had a contract to the State line of 83 with the Chicago & Atlantic. That is about the substance of it. I am not aware that Mr. Treat said anything in regard to it. I think that contract was pro-

192 duced at that time. I think that the General asked for a copy of the contract, and I had a copy in my desk,

and while I was looking up my copy I think the General found a copy in his office and handed it over; I believe he handed it to Mr. Treat. I do not know whether Mr. Treat took it and examined it; I could not say. I was in and out, back and forth, in that room and into my own room. I would not say positively that he read it all over. I think he glanced at it, however. That was at the time the contract between the Standard Steel & Iron Company and Mr. Treat was executed or at the time it was dictated. I would not say which. I heard the General say a great many times, to men who were negotiating for sites, that he would not guarantee any rate at any price. My recollection is that Mr. Treat said, "I don't see anything in this contract about that 83 rate." The General said, "I would not guarantee a rate of $100.00 a car." I knew there was a credit of twenty dollars that was subsequently allowed for some reason to the Treat Manufacturing Company. All that I remember about it now is that there was. Mr. Treat claimed some excessive charge for freight and called the General's attention to it, and he looked into the matter and told one of his clerks to allow him twenty dollars to cover that rate. I think Marshall Lapham drew up a bill afterwards. I believe there was a bill or voucher drawn up for Mr. Treat's signature as a receipt for this money—this allowance.

Cross-examination by Mr. COOPER:

I am a real-estate dealer in Chicago. I have no office at present. I have been dealing, but business is very dull. I have been giving attention to the board of trade business some; I have just closed a real-estate transaction within a day or so. I left the Standard
193 Steel & Iron Company a year ago last July. I had no relation to General Torrence besides being secretary of this company. I was secretary of the Calumet Land & Improvement Company and the canal company. I was secretary of all three of them and General Torrence was president of all three of them at the time I was secretary; General Torrence's office is a room probably 15 feet long and about 12 feet wide, I should say; no one occupied that office in September, 1888, besides General Torrence; there was only one desk there.

Q. What were you and Mr. Todd and Mr. Lapham all doing there?

A. I opened the negotiations with Mr. Treat for a site.

Q. At whose direction did you write the letter?

A. Mr. Surghnor gave me Mr. Treat's name and I wrote him a letter; General Torrence did not direct me to write that letter. I wrote it as I do to all industries seeking a location. We were all in the room. I would not say whether I sat down or stood up. I was in the room. I went in because I was one of the parties in interest. I was an officer—secretary of the company. I was interested in two or three of those companies. I had no pecuniary interest. I was not a clerk. I was secretary and one of the directors. Well, we went in there and opened negotiations as to the dictation

of this contract. I think Mr. Treat and I went in there together. He called on me. I think I was invited in by the General. I say Gen. Torrence was in his room; Mr. Treat went in also. I couldn't tell you when Mr. Todd came in. I am pretty sure he was there, but I could not say certainly he was in the room. I recalled the circumstance of this conversation just at present when we were discussing it, now. I have not talked with General Torrence about the case or with his counsel.

194 ROBERT E. TODD, called as a witness on behalf of the defendant, being duly sworn, was examined in chief by Mr. BEALE, and testified as follows:

I live in Chicago and I am secretary and treasurer of the Calumet Canal & Improvement Company and the Standard Steel & Iron Company. I have no connection with the Calumet Terminal Railway Company. I have had as treasurer of that company part of the time and have been purchasing agent of that company. That road has been sold to the Northern Pacific Railway Company. I came to Chicago on the 31st day of August, 1888, and General Torrence put me in as paymaster and purchasing agent of these three companies, the railway company and these two land companies, and also as his assistant in these companies; and the C. A. Treat car-wheel works being the first to locate after I came out there, I was naturally interested in them and followed out the details of all negotiations. My brother was afterwards one of the directors, but not at the time of the contract. I believe my brother, George Todd, was a director. I was present when the contract was signed. The matter of freight rates was taken up in the contract there, and Mr. Treat asked for a copy of a contract, which General Torrence handed to him, and I afterwards handed it back to Torrence from Mr. Treat. That was the first time I saw this contract and read it. It was the Chicago & Atlantic's contract for $3 a car. I heard what talk there was, but I hadn't seen it until that time. That contract was handed to Mr. Treat, and after Mr. Treat had seen it I took it and glanced over it. I didn't read it through. I can't remember what was said at the time

about freight rates, except what went in the contract

195 I mean the contract signed by Mr. Treat with the Standard Steel & Iron Company for Mr. Treat's location. At another time, in the beginning of October, when we were down in East Chicago, I think it was the day we discharged our chief engineer, Mr. Hotchkiss—General Torrence had a row with him and discharged him. What day it was I could tell by looking up the pay-roll, but on the hand car at Hammond Mr. Treat was complaining of the freight rate on brick to East Chicago and asked General Torrence about guaranteeing it, and General Torrence said, "Why, Mr. Treat, I wouldn't guarantee $100 or $1 a car. I approved all the vouchers in General Torrence's name. I had authority to approve them all, and that voucher allowing Mr. Treat a credit of $20 I approved in the way it finally went into the books. General Torrence, when the matter

afterwards came up with Mr. Treat, objected to the wording of that voucher and made me write a clause on the foot of the voucher saying that this ought to be allowed in one case only. That is my writing at the foot of this paper you hand me. That is the voucher of $20 that he objected to the wording that we put in, and it was put in that this was allowed in this one case and no others. It was prepared at the time it bears date, and I put the approval of General Torrence's name on the back, and when General Torrence found it out he objected to the wording, and that was the first time he reproved me. I did not write this at the same time that was written. That had gone on the books already. The upper part was written by the book-keeper along in the month it is dated. I can't say the date it was written. It was put on because General Torrence objected to the wording, and maybe it was put on to show that
196 was allowed in that one case only. That is my writing as it is two years ago and it is just the same now.

The COURT: I will sustain the objection to it.

To which ruling of the court counsel for defendant then and there duly excepted.

I was purchasing agent and paymaster, not book-keeper. As I understood that allowance, Mr. Treat sent those five cars of lumber over the Michigan Central Railway Company's road according to General Torrence's instruction. I understood this from the conversation that occurred at that time. There was Marshall Lapham, the auditor and book-keeper, and General Torrence and myself present at the time of the conversation. The understanding that I had was that Mr. Treat had shipped this car over the Michigan Central according to what he thought were General Torrence's instructions.

Cross-examination by Mr. GURLEY:

I could not say as to how many minutes Mr. Treat was in the office the day the contract was signed. It took some time, because the contract was dictated and written out on the typewriter. I should think it would take some time to do that. I don't think I was in General Torrence's office at the time Mr. Treat came into his private office. I cannot remember how General Torrence's office was fixed at that time. It has been changed two or three times, and I cannot locate where Mr. Treat was sitting. I don't remember. I couldn't say who was there when the contract was handed to Mr. Treat. I know Mr. Treat and myself were there at one time. I can't say whether Mr. Prentiss was there or not. General Torrence handed me the contract. He got it from his desk. When it was laid back on General Torrence's desk I took it up and looked at it. It had been laid on the desk. I would not go into Torrence's
197 drawer. The same copy that was handed to Mr. Treat; that is the only copy that I know of. I supposed while I was standing there, while they were signing the papers. I had not been out of the room in the meantime. I had been there all the time.

It may have been a few minutes after Mr. Treat examined the contract before I examined it; I cannot say. The contract was between Gen. Torrence, Mr. Young, Mr. Towle, and the Chicago & Atlantic Railway Company; the one read in evidence this afternoon. That was the same contract, I believe, that I saw that day. I cannot tell. The paper was a contract between the Chicago & Atlantic and Gen. Torrence and Mr. Towle and Mr. Young for $3 a car. I don't think I ever mentioned to Gen. Torrence that I had ever seen that contract, and I don't think General Torrence knows that I had seen it. I don't know that General Torrence knows that I ever looked at it. When I was in New York last spring, coming back from Europe, my brother told me about this coming up. They asked me if I had ever seen it, J. Kennedy Todd, my brother, in New York, and George Todd, my brother, in New York, and I said I had seen the contract between General Torrence, Mr. Young, and Mr. Towle with the Chicago & Atlantic to the State line, but being to East Chicago I can't say. No; I can't say that I did say at that time that I had seen Mr. Treat glance at the contract. Up to the moment that I came on the stand to-day I never told anybody that I saw Mr. Treat look at that contract. I didn't share the same room with Gen. Torrence. Gen. Torrence had a private office. General Torrence called me in at the signing of these contracts and I was there when Mr. Treat was there.

198 MARSHALL LAPHAM, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. BEALE and testified as follows:

My name is Marshall Lapham; my residence is Chicago; I am accountant or auditor of the Standard Steel & Iron Company. I am the Marshall Lapham who has been referred to in the progress of this case. I am a stenographer, too. I heard a conversation between Gen. Torrence and Mr. C. A. Treat prior to the execution of the contract between them, dated September 11, 1888, on the subject of freight rates between Chicago and East Chicago. I don't know that I can locate at what time. I think before that; probably in the office. I would not state that I could say any particular time when I heard it. Approximately, I think it was at the time of the execution of the contract. I could not say positively who were present besides myself, Gen. Torrence, and Mr. Treat. I think Mr. Prentiss and Mr. Reynolds were there a part of the time. I don't know whether he was in at the time it was signed or not, and General Torrence was there and Mr. C. A. Treat and Mr. Todd, I think, was there. All I know there was a discussion about rates of freight, and Mr. Treat wanted the General to put in a clause in the contract guaranteeing a certain rate of freight, and the General said he would not do it, because he would not guarantee any rate of freight; therefore he could not put it in the contract. I think it was about the time of the preparing of the contract. It was dictated to me in General Torrence's private office on the day on which it was signed, September 11, 1888, and I wrote it out. I don't know that I can state

who was present at the dictation. I know Mr. Prentiss, Mr.
199 Reynolds, and Mr. Todd came in and were out and in, but whether they were all in I don't remember. I remember particularly about the time the voucher for $20.00 came up. At the time the bill was rendered they again discussed this subject—the voucher for $20. There had been a bill presented to them showing a credit to the C. A. Treat Manufacturing Company, and Mr. Treat came in the office in regard to some other items on the bill—some other charge—and General Torrence was looking it over and he saw this credit of $20 and he read it over and told me those were not his instructions; that that should not be put on in that way. He said it should be changed and wanted it changed right away, the way his instructions were given, and he told Mr. Todd to make the corrections on the voucher, which had been approved by Mr. Todd and not by himself; that he would not approve such a voucher. I got the understanding from Mr. Treat that the General had instructed him to ship by the Michigan Central by letter; that he had written him that he had a certain rate of freight, and Mr. Treat came in and complained that the Michigan Central had not complied with that rate of freight; that they charged more than he stated in his letter, and I understood that they had shipped four or five cars—I guessed it was—and he complained about that. The General said, well, since he had written that letter he might allow them $20, and so the credit was made on the books, but the General objected to the wording; it was not in accordance with his instructions.

Q. Have you the ledger here containing that account?

A. Yes, sir.

Mr. Cooper: And the book containing the items which go into the ledger?

A. The journal; yes, sir.

200 Mr. Beale: Turn to the entry in the journal.

A. (Witness does so.)

Mr. Cooper: Is there any other account in the ledger except that with the C. A. Treat Manufacturing Company?

A. No, sir.

The Court: Do you want to introduce that ledger account?

Mr. Beale: You kept this account?

A. I did not do the writing; no, sir; the book-keeper did that.

Q. Who had general charge of it?

A. I did.

Q. Under your direction?

A. Yes, sir.

Q. This item here reads, "Accounts, payable, 31, $20."

A. The entry is, "31. Accounts payable to C. A. Treat car-wheel works for the amount of voucher 189." That means that he has transferred this from accounts payable to the C. A. Treat Manufacturing Company, to their credit.

Mr. Beale: I offer this voucher in evidence.

Objected to by counsel for plaintiff; which objection was over-

ruled by the court; to which ruling of the court counsel for plaintiff then and there duly accepted.

201 189 Date of voucher, Nov'r 30TH, 1888.

Standard Steel & Iron Company to C. A. Treat Car Wheel Co., Dr.

1888. Chief engineer's No. —. Address, Chicago, Ills.

For amount allowed by order of the president, being excess charged by r'y on 5 cars of material from Chicago to East Chicago $20 00

This was allowed by president on account of his having instructed Mr. Treat to ship by that road, but will be allowed in no other case.

Ret.

I certify that the above has been received. Correct.

Received —— —, 188–, of Standard Steel & Iron Co. the sum of —— dollars in full of above account.

Signature, —— ——.

202 Cross-examination by Mr. GURLEY:

I cannot say that this note which is appended to the voucher was put on in the presence of Mr. Treat. I don't know that it was ever shown to Mr. Treat. It was discussed before Mr. Treat; as he testified, about the wording. There was nothing that I know about the wording of the contract that Mr. Treat objected to. General Torrence objected to the wording of that voucher. I will state that he reproved me, but I cannot state the language, for I don't remember. I don't know that he did state in his reproof that I "would legalize anything." I have no recollection of anything of the kind. I don't know what time of day it was when Mr. Treat first came into the office the day the contract was signed. I think it was probably along near ten o'clock. I don't remember how long he was there at that time. I know—that is, I think—it was dictated to me, and I went out and, I think, went to the lawyers and had them look it over and shape it up before I wrote it on the machine, and then I took it in there, but just how long that was I don't know. Mr. Treat was present when the contract was dictated to me. He remained there continuously from that time until the contract was signed so far as I know. He was there when I came back. I cannot state how long I was gone; probably as much as an hour, maybe, and when I came back I found Mr. Treat there. Mr. Prentiss was there when I came back. I don't know that I remember that any one else was there. I don't remember whether Mr. Todd was there or not. General Torrence was there. I think when I brought the contract back was when the conversation was had about freight rates. I don't know that there was anything said about it when he dictated the contract, although Mr. Treat

203 heard the dictation. I think that subject was first brought up, so far as I know, at the time when I brought the con-

tract back for final execution. I don't know how long it was after I brought it back for execution before Mr. Treat signed it; probably not very long. I don't remember particularly.

Q. Have you talked with anybody about this case recently, and particularly the conversation that occurred there on the day of signing the contract?

A. I guess I have. I don't know, but I think with Mr. Beale I talked the case all over. I don't know whether I did or not; I suppose I did. I don't remember whether I mentioned specifically to Mr. Beale the fact of this alleged conversation regarding freight rates; I don't remember definitely. I don't know that I have talked with anybody else about it since the day it occurred. I have no personal knowledge as to what railroads did carry that freight which was the subject of the charge of five cars extra freight. This is a copy of a letter that I wrote to Mr. Kershaw. It is dated August 4th, 1888, addressed to Mr. Kershaw, auditor of the Chicago & Atlantic. That is the letter which drew out from him the letter of August 8th which was put in evidence. The original was sent August 4th, 1888:

"Mr. J. D. Kershaw, aud. Chicago & Atlantic R'y Co.

DEAR SIR: We have bills from your company charging us $7.50
a car from Chicago to East Chicago. As we understand it,
204 the rate should be $3, and we therefore hold the bills until
our General Torrence returns to the city, which will be next
Wednesday, when the matter will be taken up and definitely settled.

We hope this will be satisfactory to you.

Yours respectfully, MARSHALL LAPHAM."

I wrote it myself.

Q. You say, "We understand that the rate," so and so—that is, you mean you; you used the word "we" (you understand that). From whom did you understand that?

A. I understood that from the Chicago & Atlantic Railroad Company.

Q. From what person connected with the Chicago & Atlantic Railroad Company?

A. Whoever makes out the bills. I understood that we had a $3 rate. General Torrence might have told me about the $3 rate. I don't know whether he did or not, but I know I had been paying right along Chicago & Atlantic bills $3. I took my information from the fact we had been billed stuff at $3.00.

JAMES J. REYNOLDS, a witness called on behalf of the defendants, being first duly sworn, was examined in chief by Mr. BEALE and testified as follows:

My name is James J. Reynolds. I reside in Chicago. I am
205 connected with the Standard Steel & Iron Company as chief
engineer. I have been chief engineer or been connected with
the company since June, 1888. I don't recollect any time positively

when I was present at any conversation between General Torrence and Mr. Treat on the subject of freight rates between Chicago & East Chicago. I was around the ground with them down there when they were starting to build; laid Mr. Treat's shop for him; but I recollect General Torrence, in a general way, saying—I could not say whether it was in the presence of Mr. Treat or not. I have no knowledge on the subject of their negotiations or their contract, no more than going there, as I say, and laying out the ground as engineer.

THOMAS W. JOHNSTONE, a witness called on behalf of defendant, was first duly sworn and examined in chief by Mr. BEALE and testified as follows:

My name is Thomas W. Johnson. I reside in Chicago or Cook county. I am superintendent of the Standard Steel & Iron Company. I was connected with the Standard Steel & Iron Company in the year 1888. There was one time we were leaving East Chicago to go to Hammond to get the Ft. Wayne train—that was the only way we had to get to Chicago—and about that time Mr. Treat was getting material in and he was on the same hand car with us and speaking about the freight. I heard the General explain to him that he could guarantee no freight rate; that it was 83 from East Chicago to Hammond and the trackage was fifty cents; not over a dollar. This was on the hand car from East Chicago to North Hammond. There was Mr. Treat and Mr. R. E. Todd, beside myself. Well, it seems there was some trouble
206 about getting. How I happened to hear it I was sitting right between Mr. Treat and General Torrence on the hand car and they talked across me. It was just about the time the works were laid out when Mr. Treat was getting his material in on the ground. I think it was September, 1888. Mr. Treat used to come to me occasionally down there and ask me why he could not get his freight from Hammond, and the agent at that time, Mr. Reed, whenever he came up there he would always come on an engine, and Mr. Treat wanted to know if he had to walk to Hammond to pay his freight, and that was the only way there was to get there, except I would get him there on a hand car, and several times I did send him on a hand car down there to pay his freight. Mr. Reed told me two or three times that he didn't care much about his coming up there to East Chicago himself on account of his only getting 83 for coming up there, so Mr. Treat had to go down there and pay the freight at Hammond himself before Mr. Reed would bring the car up. I said it was shortly after Treat commenced building. I think it was in September. I believe it was the same day on which there was a difference or difficulty with Hotchkiss, the chief engineer.

Cross-examination by Mr. GURLEY:

Mr. C. A. Treat was on the hand car; this Will Treat may have been there, but the car was so crowded I could not say. I don't deny but that he was there. I had some connection with the rail-

road company at one time. I was superintendent of construction. The Wabash had a connection with the Terminal and ran over its tracks. The Wabash itself did not run locomotives over the Terminal from the junction point or the crossing to East Chicago.

207 JACOB S. BECK, a witness called on behalf of the defendant, being first duly sworn, was examined in chief by Mr. BEALE and testified as follows:

My name is Jacob S. Beck. I reside in Chicago. I am engaged in no active business at present. I was previously engaged in the railroad business with the Chicago & Calumet Terminal railway from September 1, 1889, to September, 1890. I was chief clerk of general accounts of the Wabash road. I was in the auditor's office of the Wabash railway, and from there went to the Chicago & Calumet Terminal railway about September 1, 1889. I have been in the railroad business about eight years. I was general freight agent for the Terminal. I made all the traffic arrangements and the method of settling accounts also with officers of roads that crossed the Terminal. The Chicago rates apply as to the rate of charges from Chicago to points on lines running into Chicago with which the Chicago & Calumet Terminal had connection. That was the universal rule. Of course, there were some cases where they did not apply—that is, where the lines themselves would receive less than what the Calumet Terminal switching charge amounted to they would concede the switching charge to the Terminal. There was no case where it was greater than the Chicago rate charged after the junction was effected between the Terminal Company and the line running into Chicago on competitive business.

Cross-examination by Mr. COOPER:

I became the freight agent of the Terminal road October 15, 1889; about that date. I think that is when the first tariff
208 was published. I left the service of the railway on June, 1890, but I remained with the contracting company settling the railroad accounts until September 15.

Q. How far west and northwest of East Chicago had the road been built at the time you became freight agent, in October, 1889?

A. It had been constructed to near the Santa Fé, where it crossed the Santa Fé, when I became freight agent. It had crossed the Chicago & Atlantic, the L., N. & C., the Nickel Plate, New York, Chicago & St. Louis, commonly called the Nickel Plate, the Michigan Central twice, Illinois Central, Chicago & Eastern Illinois, Chicago, St. Louis & Pittsburgh, the Big Four, Cleveland, Cincinnati, Indianapolis & St. Louis, running over the Illinois Central, the Rock Island, the Grand Trunk, the Wabash, between the Santa Fé and East Chicago. Mr. Treat has testified he was charged a larger rate by the Burlington. I know about that one shipment. Mr. C. A. Treat, the old gentleman—I never knew his name—he stated to me that the shipper paid that charge and he was not interested in it; that the material was sold and delivered at East Chicago.

R. E. Todd, being recalled on behalf of defendant, was examined by Mr. BEALE, testified as follows:

For the last eighteen months, probably, General Torrence has left the real estate of East Chicago a good deal in my hands to fix the prices of the lots, and most of the sales have passed through my hands. The lots in our subdivision range from $250. I had charge of and knew the purchase price in the office. I know the land that was conveyed to the C. A. Treat Manufacturing Company. There have been sales from $400 an acre up. There was one site we sold, three and a half acres of land, to the "Famous" Manufacturing Company, along with three lots; $4,000 was the price we got for that. This one I referred to, $4,000 for this small site of three acres and a half and three lots. It is situated right across the street from—practically across the street from Mr. Treat's works, a little bit north; $4,000 for three and a half acres just across the street from Mr. Treat's place and possibly fifty to one hundred feet north of his north line.

The Treat land I should consider the most valuable, because it has got the frontage on this proposed canal to be constructed and it has got a railroad frontage. Of course, the other has railroad connection. I think a thousand dollars an acre is the lowest price on the Treat site. Yes, I know where the lots conveyed to Mr. Treat are. Corner lots are worth $800 apiece out there, and the ones next to them are worth $400 apiece. There are two corner lots and two inside lots.

Cross-examination by Mr. COOPER:

We made this sale to the "Famous" Company in 1889. It was the spring of 1889. We have been selling lots all along there this year. We have made a sale to a man, S. W. Winters, and Chas. Spalding. We sold some to Mrs. Matilda Flagg. Mr. Winters bought one lot there within three hundred feet, I think, of Mr. Treat's works. There are nine lots to the acre. It was $600 a lot that he paid, and there are nine lots to the acre; that makes $5,400 per acre. Within about three hundred feet on a street not macadamized the street is thrown up. Treat's property is on Railroad avenue. The railroad has a separate right of way; the street is dedicated to the town; it is eighty feet wide; it is called Railroad avenue because of its proximity to the railroad tracks.

Which was all the testimony here offered on the part of the defendant.

And the plaintiff, to further maintain issues on its part, introduced the following testimony:

CORNELIUS A. TREAT, being recalled on behalf of the plaintiff, was examined in chief by Mr. COOPER and testified as follows:

Q. Mr. Treat, have you heard the testimony of Joseph T. Torrence, Todd, Lapham, and Prentiss here?

A. I have.

Q. I call your attention only to that part of the testimony in which they testified you were shown the contract, what is called the Towle contract, between Torrence and the Chicago & Atlantic railroad, Torrence and others. When did you first see that contract?

A. The first time I ever saw that contract was when it was brought here in this court-room, since the beginning of this trial. The first I heard of any such contract was about the time I got ready to run down there. I heard it first through Mr. Lesh. He was telling me about it, and then I went and inquired whether there was such a contract as that in existence. I inquired of Mr. Crane, the freight agent of the Atlantic road. That was about the time I got ready to run—June, 1890—the time I got ready to do business. General Torrence never told me anything about such a contract, never a word.

Cross-examination waived.

211 Mr. BEALE: There are some papers I should have offered in evidence—the expense bills, which were handed to Mr. Kershaw yesterday and which he identified.

Mr. COOPER: That is all right, and these maps, etc. We agree that anything that has been called to the attention of the court and jury shall be considered in evidence.

WEDNESDAY, *December 3rd*, 1890.

Court met, pursuant to adjournment, at 10 o'clock a. m.

Mr. BEALE: Mr. Todd desires to make a correction in his testimony, your honor.

R. E. Todd, being recalled, was examined by Mr. BEALE and testified as follows:

Q. I understand you would like to correct some statement made in your testimony in answer to question of Mr. Cooper as to values. You may state what it is.

A. Mr. Cooper asked me if we had sold certain lots this year, and I mentioned three, Winters, Spalding, and Mrs. Flagg. I find on looking up our records that the Winters sale was put through on the 22nd day of December, 1889, which is not the present year, but it is within a year; also that in looking up the record I find the Winters sale was $450 instead of $600, as I stated last night. There was a sale nearer than that to Mr. Treat, to Andrew Geher, which I was going to name, and that was $800 we got for that lot.

Q. I did not put you on for any new testimony. Is that all the correction?

A. That is all the correction; yes, sir.

212 Which was all the testimony offered upon the trial of said cause by either of said parties.

Whereupon the defendants, by their counsel, moved the court to charge the jury to find the issues for the defendants; which said motion the court then and there granted, and the plaintiff, by its

counsel, then and there duly excepted to the granting of said motion.

Whereupon the court charged the jury as follows:

"Upon the whole case you are instructed, gentlemen, to return a verdict for the defendants."

To the giving of which instructions to the jury the plaintiff, by its counsel, then and there duly excepted.

And thereupon the jury rendered a verdict in favor of said defendants and against said plaintiff.

Whereupon the plaintiff, by its counsel, then and there moved the court to set aside the verdict so rendered and grant a new trial in this cause, but the court denied the said motion and gave judgment on the verdict against the said plaintiff; to which decision of the court in denying said motion and entering said judgment upon said verdict the plaintiff, by its counsel, then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record the plaintiff tenders this its bill of exceptions and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made, which is accordingly done this — day of ——, A. D. 1890.

Approved:

W. Q. GRESHAM.

(Endorsed:) Filed Dec. 3, 1890. Wm. H. Bradley, clerk.

213 Afterward, to wit, on the twenty-fourth day of November, 1891, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, the C. A. Treat Manufacturing Company, Cornelius A. Treat, John S. Cooper, and William W. Gurley, are held and firmly bound unto Joseph T. Torrence and the Standard Steel and Iron Company in the full and just sum of one thousand dollars, to be paid to the said Joseph T. Torrence and the Standard Steel and Iron Company, his and its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twentieth day of November, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the United States circuit court for the northern district of Illinois, in a suit depending in said court between said C. A. Treat Manufacturing Company as plaintiff and Joseph T. Torrence and The Standard Steel and Iron Company as defendants, a judgment was rendered against the said C. A. Treat Manufacturing Company for costs, and the said C. A. Treat

214 Manufacturing Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to

reverse the judgment in the aforesaid suit, and a citation directed to the said Joseph T. Torrence and said Standard Steel and Iron Company, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the 23d day of December next:

Now, the condition of the above obligation is such that if the said C. A. Treat Manufacturing Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

C. A. TREAT MFG CO., [SEAL.]
By CORNELIUS A. TREAT, *Pres.*
CORNELIUS A. TREAT. [SEAL.]
JNO. S. COOPER. [SEAL.]
WM. W. GURLEY. [SEAL.]

Attest: JAMES W. TREAT,
[SEAL.] *Secretary.*

Approved by—
W. Q. GRESHAM,
Circuit Judge.

(Endorsed:) Filed Nov. 24, 1891. Wm. H. Bradley, clerk.

215 Afterward, to wit, on the twenty-fifth day of November, 1891, came the plaintiff, by its attorneys, and filed in said clerk's office its assignment of errors in said entitled cause; which said assignment of errors *are* in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court for said District.

THE C. A. TREAT MANUFACTURING COMPANY }
vs.
STANDARD STEEL & IRON COMPANY and JOSEPH T. TORRENCE. }

Assignment of Errors.

And now comes the said plaintiff, The C. A. Treat Manufacturing Company, and makes the following assignment of errors committed by the said circuit court on the trial of said cause, viz:

1st. The court erred in instruction the jury as follows: "Certain legal questions have been argued by counsel in your absence. This is a suit brought by the plaintiff, a Missouri corporation, against the defendant, an Illinois corporation, and the president of the defendant as an individual to recover damages for fraud, the fraud consisting in certain representations made by Gen. Torrence, one of the defendants, and the president of the other defendant, which

were relied upon by the plaintiff and which were untrue. It
216 is said that Gen. Torrence agreed that if the plaintiff would remove its manufacturing establishment from Hannibal, Missouri, to East Chicago and erect a plant there capable of manufacturing 200 car wheels a day that the plaintiff should have a certain amount of land, ten acres, I believe, free as a bonus, and that the plaintiff should also have a rate on freight shipped from Chicago to East Chicago of 83 or 83½ a car for twenty years, and also *to* Chicago rate on all freight shipped from points west, northwest, and southwest to East Chicago and the Chicago rate on freight shipped from East Chicago to all points west, southwest, and northwest.

The interstate commerce law prohibited a railroad company from granting a rate to any one shipper lower than the open or general rate, and if this rate which the plaintiff claims it expected to receive was lower than the open or general rate charged to others it was a violation of the interstate-commerce law. It was prohibited by that law, and the plaintiff cannot be heard to say that it entered into an agreement with Torrence whereby it expected to derive benefit from that illegal contract. The interstate-commerce law was in force at the time the plaintiff entered into this arrangement with the two defendants, if such an arrangement was entered into, and the evidence before you shows, I think, that the 83 rate or 83½ rate was lower than the open or schedule rate between Chicago and East Chicago, and the plaintiff had no right to rely upon any arrangement of that kind, which was illegal and prohibited by the statute. Again, Mr. C. A. Treat, the president of the plaintiff company, testified before you that he had been engaged in manufacturing car
wheels at Hannibal, Missouri, for a number of years; that
217 he was familiar with the business; that competition was so sharp that the profits were small; that he came to Chicago and looked into the situation here, including rates; that rates were a very important consideration in the manufacture of car wheels on account of the low profit, and that he studied the situation, including the question of rates, and that he made up his mind to establish a manufactory at East Chicago on the faith of this low rate. He also stated to you that a 87 rate or a 87½ rate would be ruinous; that he could not maintain his establishment and pay these rates without loss.

Now, it is also in evidence before you that Mr. Treat knew before this manufactory was completed that the railroads, including the Chicago and Atlantic, denied his right to this 83 or 83½ rate, and yet he went on and completed his manufactory. Now, of course, on his own testimony, he did not complete the manufactory on the faith that he was to have this 83 or 83½ rate. He cannot be heard to say, then, that what he did thereafter was on the faith of the representations made to him by Gen. Torrence. That showed this much—because he is a sensible man, as we may assume from his evidence—that he built that manufactory there relying on something else than this rate, which, he says, was guaranteed to him by Torrence. Perhaps he was satisfied from a general outlook that the

development of this place would become such that he could make money there, paying nothing for his plant or his ground. At all events, it showed that what he did after learning that he could not rely upon the representations was not done on the faith of
218 the representations, and if he acted thereafter, not on the faith of these representations, but on the faith of other things, his judgment, his expectations, his belief, it is very strong evidence that he acted that way from the start rather than relying on the representations.

Upon the whole case you are instructed, gentlemen, to return a verdict for the defendant."

COOPER & GURLEY,
Attorneys for Plaintiff.

(Endorsed:) Filed Nov. 25, 1891. Wm. H. Bradley, clerk.

219 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division. }

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein C. A. Treat Manufacturing Company is plaintiff and The Standard Steel and Iron Company and Joseph T. Torrence are defendants as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this ninth day of December, 1891.

WM. H. BRADLEY, *Clerk.*

220 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois. }

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is before you in said circuit court, between C. A. Treat Manufacturing Company, plaintiff, and The Standard Steel and Iron Company and Joseph T. Torrence, defendants, in an action of trespass on the case, a manifest error hath happened, to the great damage of the said C. A. Treat Manufacturing Company, plaintiff, as by its complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-third of Decem-

ber, A. D. 1891, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of November, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 116th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY,
Clerk U. S. Circuit Court, Nor. Dist. Ill.

[Endorsed:] Supreme Court of the United States. C. A. Treat Manufacturing Company, plaintiff in error, *vs.* The Standard Steel and Iron Co. *et al.*, defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

221 UNITED STATES OF AMERICA, } *ss.*:
Northern District of Illinois, }

To the Standard Steel and Iron Company & Joseph T. Torrence, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-third day of December, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein you are defendants and The C. A. Treat Manufacturing Company is plaintiff, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 24th day of November, in the year of our Lord one thousand eight hundred and ninety-one.

WALTER Q. GRESHAM.

222 [Endorsed:] Supreme Court of the United States. C. A. Treat M'f'g Company *vs.* Standard Steel & Iron Co. & Jos. T. Torrence. Citation to Dec. 23rd, A. D. 1891.

The within citation has been served upon us this twenty-fifth day of November, A. D. 1891, and we acknowledge having been attorneys for the within-named defendants in error upon the trial in the circuit court.

ISHAM, LINCOLN & BEALE.

Chicago, Ill., Nov. 25, 1891.

Endorsed on cover: Case No. 14,950. N. Illinois C. C. U. S. Term No. 686. The C. A. Treat Manufacturing Company, plaintiff in error, *vs.* The Standard Steel & Iron Company & Joseph T. Torrence. Filed December 21, 1891.

JAN 4 1892
JAMES H. MCKENNEY, CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1891.

No. 1476

THE C. A. TREAT MANUFACTURING COMPANY
vs.
THE STANDARD STEEL AND IRON COMPANY AND JOSEPH T. TORRENCE.

Error to the Circuit Court of the United States for the Northern District of Illinois.

APPEARANCE OF DEFENDANTS IN ERROR AND MOTION TO DISMISS WRIT.

And now come the above-named defendants in error, by William G. Beale, their attorney, and enter their appearance in this the above entitled cause.

And thereupon said defendants in error move the court to dismiss the writ of error herein; and they say that this court is without lawful jurisdiction of this cause upon said writ of error; that said writ was sued out November 24, 1891, to obtain a review of a judgment rendered for defendants December 3, 1890, upon the verdict of a jury in an ordinary action of trespass on the case, involving one hundred thousand dollars; and

that the jurisdiction of this court to review said judgment by said writ of error has been taken away by the act of Congress entitled, "An Act to establish Circuit courts of appeals, and to "define and regulate in certain cases the jurisdiction of the "courts of the United States, and for other purposes," approved March 3, 1891.

Wherefore said defendants in error pray that said writ of error may be dismissed, etc.

WILLIAM G. BEALE,

Attorney for the said Standard Steel and Iron Company and Joseph T. Torrence, Defendants in Error.

BRIEF.

MAY IT PLEASE THE COURT:

As set forth in the motion to dismiss, this writ of error was sued out November 24, 1891, to obtain a review of a judgment rendered December 3, 1890, upon the verdict of a jury (directed by the court), in an action of trespass on the case in the Circuit court of the United States for the Northern District of Illinois, involving one hundred thousand dollars. The plaintiff in error was the plaintiff in the Circuit court, and is a corporation and citizen of Missouri. The defendants in error are citizens of Illinois. The motion is based upon the act of Congress commonly called the Appellate Courts Act, and raises only questions relating to that act. The material parts of the act are the following:

SEC. 5. That appeals or writs of error may be taken from the district courts or from the existing circuit courts direct to the Supreme court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme court from the court below, for decision.

From the final sentences and decrees in prize causes.

In cases of conviction of a capital or otherwise infamous crime.

In any case that involves the construction or application of the constitution of the United States.

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.

In any case in which the constitution or law of a state is claimed to be in contravention of the constitution of the United States. * * *

SEC. 6. That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision[s] in the district court[s] and the existing circuit courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law. * * *

SEC. 14. That section six hundred and ninety-one of the Revised Statutes of the United States, and section three of an act entitled "an act to facilitate the disposition of cases in the Supreme court, and for other purposes," approved February sixteenth, eighteen hundred and seventy-five, be, and the same are hereby repealed. And all acts and parts of acts relating to appeals or writs of error inconsistent with the provisions for review by appeals or writ of errors in the preceding sections five and six of this act are hereby repealed.

Section 691 of the Revised Statutes of the United States, and section 3 of the act of February 16, 1875, specifically repealed by section 14 of the act of March 3, 1891, were, respectively, as follows:

SEC. 691. All final judgments of any circuit, or of any district court acting as a circuit court, in civil actions brought there by original process, or removed there from courts of the several states, and all final judgments of any circuit court in civil actions removed there from any district court by appeal or writ of error, where the matter in dispute, exclusive of costs, exceeds the sum or value of two thousand dollars, may be re-examined and reversed or affirmed in the Supreme court upon a writ of error.

SEC. 3. That whenever, by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of two thousand dollars, exclusive of costs, in order that the judgments and decrees of the circuit courts of the United States may be re-examined in the Supreme court, such judgments and decrees hereafter rendered shall not be re-examined in the Supreme court unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

It is obvious that this case does not fall within the provisions of the fifth section of the Appellate Courts Act, but does come

under the sixth section. The writ of error should have been seasonably sued out of the Circuit court of Appeals for the seventh circuit, the Supreme court has no jurisdiction to review directly the decisions of the Circuit court, and this writ of error should be dismissed.

WM. G. BEALE,
For Defendants in Error.

EDWARD S. ISHAM,
WILLIAM G. BEALE,
Of Counsel for Defendants in Error.

Office Supreme Court, U. S.
FILED.
MAR 27 1895
JAMES H. McKENNEY,
CLERK.

Term No. 353. Gen. No. 14,950.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1894.

The C. A. Treat Manufacturing Company,
Plaintiff in Error,
vs.
The Standard Steel and Iron Company and Joseph T. Torrence,
Defendants in Error.

Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF OF PLAINTIFF IN ERROR

IN OPPOSITION TO MOTION OF DEFENDANTS IN ERROR TO DISMISS WRIT OF ERROR.

JNO. S. COOPER,
ATTORNEY FOR PLAINTIFF IN ERROR.
GEORGE H. SHIELDS,
OF COUNSEL.

THE GUNTHORP-WARREN PRINTING COMPANY, 53 DEARBORN ST., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

The C. A. Treat Manufacturing Company,
Plaintiff in Error,
vs.
The Standard Steel and Iron Company and Joseph T. Torrence,
Defendants in Error.

Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION OF DEFENDANTS IN ERROR TO DISMISS WRIT OF ERROR.

STATEMENT OF THE CONTROVERSY.

MAY IT PLEASE THE COURT:

This motion to dismiss the writ of error in this case ought not to be granted, if the Court shall be of opinion that where the judge presiding in the trial court has himself decided the questions of fact in issue, and has refused to allow the jury to have any part therein, constitutes such a denial of the right of trial by jury, as makes a case which "involves the construction or *application* of "the Constitution of the United States."

The grievance of the plaintiff in error, as set forth in the

declaration, and proved on the trial, was occasioned by the false representations of the defendant in error Torrence, in inducing the plaintiff in error to erect a large manufacturing plant in East Chicago, where the defendant in error, The Standard Steel and Iron Company, as owner of the land, was endeavoring to build up a manufacturing town, the defendant, Torrence, being its president.

The false representations consisted of two statements made by defendant, Torrence, to the president of plaintiff in error, viz:

First. That said, The Standard Steel and Iron Company had a written contract with a railroad company operating a railroad between the City of Chicago and East Chicago, whereby all industries located at East Chicago would have the benefit of a rate of freight between the two points of three dollars per car for the period of twenty years.

Second. That the rates of freight from East Chicago to all points north-west, south-west and east were the same as the rates from the City of Chicago to those points. Those grievances were set forth in proper form in the three original and two amended counts of the declaration. The defendants filed the plea of the general issstue. The trial was had before the court and jury.

After all the evidence for plaintiff and defendant was in, the court decided, that because the plaintiff, *after having expended some thousands of dollars in building its plant*, learned that the representations were false, then went on and completed its manufactory, must be regarded as not having relied upon the representations, and, therefore, that it had *no right of action.*

On the other branch of the the case, wherein the false

representions (regarding the rates of freight to all points north-west, south-west, and east, being the same from East Chicago as from the City of Chicago), although the fact that such representations were made, and that they was false, and that plaintiff in error relied upon them, were proven beyond question, with no evidence to the contrary, yet the court ignored that branch of the case and directed the jury to return a verdict for the defendants.

It is most respectfully and kindly submitted that a careful consideration of this case, as presented in the printed record, will disclose an instance of a trial-judge usurping the province of a jury, and himself determining pure questions of fact, which almost stands alone in the jurisprudence of the courts of the United States.

STATEMENT OF FACTS.

The plaintiff in error brought suit in the Circuit Court against the defendants in error in an action for deceit, wherein false representations were alleged to have been made by defendant Torrence, as president of the defendant, the Standard Steel and Iron Company, under the following circumstances:

The corporation, defendant in error, owned a large tract of land near the north-western boundary line of Indiana, about twenty-six miles from the City of Chicago. It had laid out a town site known as East Chicago on this land, to be occupied by manufactories, and was engaged in inducing persons and corporations to locate their industries thereon in the summer of the year 1888, when the matters here involved took place. Another corporation, called the Calumet Canal and Improvement Company, was interested in the land surrounding the proposed manufacturing town. There was still another corporation, called the Chicago and Calumet Terminal Railway Company, which was being built from a point on the western shore of Lake Michigan, less than two miles north-east from East Chicago, through the latter place, and thence westerly, north westerly, etc., to intersect the railways leading to and from the City of Chicago.

The defendant in error, Torrence, was president of each of the two land companies, and also of the railroad company. (Rec., pp. 85, 86 and Map 64, 65.)

In the spring of 1888 the plaintiff in error was engaged in manufacturing car-wheels at Hannibal, Missouri. Its president and principal stockholder was C. A. Treat, who

had been engaged in that business at that place for many years. (Rec., pp. 30, 42.)

His attention was called to East Chicago as a desirable place at which to carry on the manufacture of car-wheels, by a former fellow-townsman, Mr. Surghnor, then residing in Chicago, who stated that it was a place where cheap freight rates prevailed. Soon afterwards Mr. Treat received a letter from this gentleman, inclosing a map of East Chicago, which was shortly followed by one from defendant, Torrence, relative to East Chicago. (Rec., pp. 30, 38.)

Mr. Surghnor's negotiations were inspired by defendant Torrence. (Rec., p. 46.) Afterwards, and in the summer of 1888, Mr. C. A. Treat, being in Chicago, was taken by Mr. Surghnor to the office of defendant Torrence. Then, and on the next day, when the three visited East Chicago, defendant Torrence made the statement that if Mr. Treat and his associates would locate a car-wheel works at that place, they would have freight rates to and from Chicago of three dollars per car, with a switching charge of fifty cents per car, to be paid to the railway company of which defendant Torrence was president; that he had a contract with the Chicago and Atlantic Railroad company to carry all freight between East Chicago and the city of Chicago at three dollars per car, which would run for twenty years, and that all industries located at East Chicago would get the benefit of that contract; that there would be an extra charge for switching of fifty cents per car. He further stated that Mr. Treat and his associates would have the same freight rates in and out of East Chicago as represented on the map, of which a copy had been sent to, and another was then handed to Mr. Treat; that is, they would get the same

rates of freight from East Chicago that were given from the city of Chicago to all points north-west, south-west, and east. (Rec. pp. 30, 31; 46, 47, and Map 64, 65.)

The rates of freight were an element of the last importance to Mr. Treat and his associates on the question as to whether they should locate their proposed manufactory at East Chicago. (Rec., pp. 31-38.)

The above conversation took place in the early part of July.

Afterwards, in September of the same year, Mr. C. A. Treat saw the defendant Torrence and they again visited East Chicago, accompanied by the witness, Oliver O. Forsythe, and during that visit the defendant Torrence repeated the same statements about freight rates and his contract therefor several times. (Rec., pp. 32, 71, 72.)

On the next day Mr. C. A. Treat entered into a contract with the defendant corporation, the Standard Steel and Iron Company, by which, in substance, he agreed to build or cause to be built, a brick building of capacity to manufacture two hundred railway car wheels per day, and to commence the construction thereof on or before the 1st day of November, 1888, in consideration of which the defendant corporation agreed to convey to Treat certain land in East Chicago, which was to be used as a site for the manufactory, also four building lots in East Chicago; and also to give to him the benefit of any and all contracts for rates of freight which the defendant corporation then had or might thereafter acquire. Upon the witness objecting to the latter clause as not being in accordance with the representations made by the defendant, Torrence, the latter said: "Well, the three-and-a-half dollar rate I "have already got for you. I drew it that way so that

"you should have the benefit of any less rate that I may "hereafter get, and I expect to get a rate of a dollar a car "to that point, and if I get that rate of a dollar a car you "shall have it."

The defendant in error, Torrence, further stated that he would show to Treat the contract with the Chicago and Atlantic road, and he called to one of his clerks, directing him to bring to him (Torrence) the contract with the Chicago and Atlantic road; whereupon the clerk replied that the defendant, Torrence, had left the contract in New York; when the latter said that he had forgotten that, but that he had the contract. (Rec., pp. 32-34).

The contract was carried out by the plaintiff in the matter of constructing the plant or building for manufacturing car wheels, and it received the deed for the site from the defendant corporation. (Rec., p. 34.)

Before any of the officers of the plaintiff discovered that higher rates of freight were being charged than the three-and-a-half dollars per car, they had made considerable progress in the construction of the building, and had incurred an expense of two or three thousand dollars therefor. (Rec., pp. 34, 43.)

Upon the matter being called to the attention of defendant, Torrence, he made different excuses at various times, in one instance that the goods (building material) were not shipped as they should have been, in his (Torrence's) name. (Rec., p. 35.)

He also agreed to pay the excess in freight on the building material which was first received, being the difference between three and a half dollars and seven and a half dollars, the latter being the rate actually charged. (Rec., p. 35.)

Finally, on the 22d of November, 1888, when the liabilities incurred by the plaintiff in the construction of the building were not to exceed two or three thousand dollars, the defendant, Torrence, sent the following letter to the plaintiff:

"CHICAGO, November 22, 1888.

"*C. T. Treat, Car-Wheel Works, 539 Rookery, Chicago:*

"GENTLEMEN: I have made arrangements to-day with "the Michigan Central Railroad Company for all busi- "ness between East Chicago and Chicago at $3 per car: "in addition to this, for the present, there will be a "charge of fifty cents per car for trackage, making in all "$3.50 per car. Please order all material coming for- "ward consigned to the Michigan Central Railroad from "Chicago to be delivered at East Chicago, on our tracts, "and you will have no more bother with your rates of "freight. Please regard this as strictly confidential.

"Yours truly,

"JOSEPH T. TORRENCE, *President.*"

(Rec., p. 36.)

After the receipt of the above letter the material shipped by the Michigan Central Company was charged for at $7.50 per car load as the lowest rate. (Rec., p. 36.)

On complaint being made to the defendant Torrence, by James W. Treat, also an officer of the plaintiff corporation, the former stated that the charge was a mistake and that he would have it rectified, and asked the witness to visit the general offices of the Michigan Central Company, with him, which he did, and on arriving there, the defendant, Torrence, left the witness, Treat, in an outside room whilst he, Torrence, went into an inner room; and when he returned said to the witness that it was all right.

and that the plaintiff would have no further trouble; that he, Torrence, had a talk in the inner office with Mr. McKay, the general freight agent of the Michigan Central Company. (Rec., pp. 43, 44.)

The evidence of the witness McKay, the general freight agent of the Michigan Central Company, was that the above letter, written by the defendant Torrence under date of November 22, 1888, was not only untrue, but was wilfully false, as was also the statement of the conversation with the witness McKay. (Rec., pp. 57-60.)

It was proven on the trial that the freight rates between Chicago and East Chicago charged to the plaintiff were from $7.50 to $12 per car-load. (Rec., p. 44.)

It was also proven that the defendant Torrence did not have a contract with the Chicago and Atlantic Company for the rate of $3 per car between Chicago and East Chicago, but on the contrary, that he had endeavored to get a rate of $3 per car-load, and had submitted a contract to that effect, but it had not been accepted up to the 15th day of September, 1888, four days after the contract between C. A. Treat and the defendant corporation had actually been executed, and that such contract was never made. (Rec., 55-57.)

It was also proven on the trial that the rates of freight from East Chicago to the points north-west and south-west were not the same as were charged from the City of Chicago, as represented in the map given to C. A. Treat, and made orally by the defendant, Torrence, but were greater by the rate from Chicago to East Chicago.

The North-Western Railroad Company, operating three trunk lines to the north-west of Chicago, charged the regular rate to Chicago with the added rate from Chicago to East Chicago. (Rec., pp. 60, 61.)

The same was true with reference to the Chicago and Alton Railroad Company, whose road extends south-west from Chicago. (Rec., pp. 61, 62.)

The same was true of the Chicago, Burlington and Quincy Railroad Company, operating a railroad running westerly from Chicago. (Rec., p. 76.)

Under the rule of evidence, which allows testimony to be given of similar fraudulent representations made by the defendant at or about the same time to accomplish the same object, witnesses were introduced on the trial to whom fraudulent representations were also made by the defendant, Torrence, in order to induce them to locate manufactoring industries at East Chicago. He made the same statements about his contract for twenty years for a three dollar rate between Chicago and East Chicago, and that the freight rates to all points from East Chicago, were the same as from Chicago to the witness James W. Treat, before the contract of September 11, 1888, was made. (Rec., p. 43.)

He made the same statement to Milo S. Hascall in the summer or fall of the year 1888, when the latter was negotiating about locating a lumber manufactory at East Chicago. (Rec., pp. 48, 62.)

He made the same representations to Frank B. Felt, Marks Schwartz and Robert Ross, officers of an iron manufacturing company, when they were negotiating with him about locating their industry at East Chicago, in the months of April and May, 1889. (Rec., pp. 64, 65; 68–70.)

It was proven on the trial that the plaintiff in error expended about $54,000 in the construction of the plant at East Chicago. (Rec. p. 37.)

It was also shown that on account of the freight rates being so much greater than represented by the defendant Torrence, it was impossible to continue the manufacture of car wheels at that point without loss, and after operating the plant for nearly a year, they were compelled to close down the works about the 1st of May, 1890. (Rec., pp. 37, 38.)

That the financial result to the plaintiff in error was a great loss of many thousands of dollars. (Rec., p. 78.)

It was also proven on the trial that the witness, C. A. Treat, president of the plaintiff in error, relied upon the representations made by the defendant, Torrence. (Rec., p. 78.)

The declaration filed in the case, in different counts, set out and averred the false representations hereinbefore detailed. (Rec., pp. 3-27.)

To the declaration the defendants in error filed a plea of the general issue. (Rec., pp. 17 and 28.)

On the trial of the case, a jury was impaneled and evidence taken on behalf of the plaintiff and defendants in error respectively, at the conclusion of which the court instructed the jury to return a verdict for the defendants. (Rec., p. 112.)

The defendant in error, Torrence, admitted that he did not have the contract with the Chicago and Atlantic Railway Company, as stated in the testimony of the witnesses for the plaintiff in error, but denied that he had made the statements which the above eight witnesses had sworn to. (Rec., p. 94.)

The judgment was rendered on December 3, 1890. (Rec., 90.)

The bill of exceptions was approved and filed December 3, 1890. (Rec., 112.)

The writ of error was sued out November 24, 1891. (Rec., 115, 116.)

The circuit judge presiding at the trial refused to submit the case to the jury, and instructed them to return a verdict for the defendants, because, first: if any such contract had been in existence, as the evidence tended to prove, the defendant in error Torrence had represented, it would have been in violation of the act of Congress known as the Inter-State Commerce Act; and, second: because, after the plaintiff in error had expended money in erecting its plant, it had learned facts which should have put a reasonably prudent man on inquiry as to the existence of the supposed contract, and that, therefore, the court was satisfied that plaintiff in error did not rely on those representations. Respecting the false representations about the freight rates from East Chicago being the same to different points as from the City of Chicago, the court persistently ignored that branch of the case altogether.

BRIEF AND ARGUMENT.

I.

THE ACTION OF THE CIRCUIT COURT IN ITSELF DETERMINING THE QUESTIONS OF FACT, AND IN DIRECTING THE JURY TO RETURN A VERDICT IN ACCORDANCE WITH SUCH FINDING, WAS A SUBSTANTIAL DENIAL TO PLAINTIFF IN ERROR OF THE RIGHT OF TRIAL BY JURY SECURED BY THE CONSTITUTION.

This Court still retains jurisdiction of appeals and writs of error "in any case that involves the construction or "application of the constitution of the United States."

26 Statutes at Large, 828.

To determine what the Congress intended by the above provision, regard must be had to the purpose intended to be effected by the law, which, for the first time in our history, deprived this Court of appellate jurisdiction to review the judgments and decrees of Circuit Courts, involving the amount in controversy here.

Before the Circuit Court of Appeals act was passed, this court had, from its creation, jurisdiction to review all judgments and decrees of Circuit Courts where the amount in controversy exceeded a certain sum.

By that act, the amount in controversy, in any case was eliminated as an element of appellate jurisdiction, and the re-examination of all such cases was confined to the exclusive jurisdiction of the Circuit Court of Appeals for the proper circuit. Nine such courts were created.

The intention must be imputed to the Congress to have

not only the rules of substantive law administered by those Appellate Courts uniformily throughout the country, but also, that the rules of practice and procedure therein should be uniform, except as provided in other statutes, regulating the practice and procedure in cases at common law in accordance with the practice and procedure in the courts of the respective states. Here were nine different courts created, each of which was to, in a large measure, throughout its own territory, take the place of the Supreme Court.

The Congress, in creating those courts, amongst other things, provided that in every case involving, not only the construction, but the *application* of the constitution, that a review should still be had before the Supreme Court.

It is, of course, appreciated that what is here asked might be said to involve the result of bringing to this Court, for review, every case where the Circuit Court had instructed the jury to return a verdict for one or the other party. That does not follow. It is confidently believed that such a case as this will rarely occur, but if it should, and the Circuit Court should there, as here, usurp the functions of the jury, then, in that case, as in this, the party deprived of his right of trial by jury, ought to find in this tribunal that certain remedy and redress which has been accorded by this Court for a deprivation of a constitutional right since it was organized.

In the case of *Hodges et al.* v. *Easton et al.*, (16 Otto, 413), this Court, speaking by Mr. Justice HARLAN, says:

"It was the province of the jury to pass upon the "issues of fact, and it was the right of the defend- "ants, secured by the Constitution of the United "States, to have them to do so. That right could have

"been waived, but it could not be taken from them by "the court. If, upon the trial, all the facts essential to "the recovery had been undisputed, or so conclusively "established the cause of action as to have authorized the "withdrawal of the case altogether from the jury, by a "peremptory instruction to find for the plaintiff, it "would still have been necessary that the jury make its "verdict, albeit in conformity with the order of the "court. The court could not, consistently with the con-"stitutional right of trial by jury, submit a part of the "facts to the jury, and itself determine the remainder, "without a waiver by the defendants of a verdict by the "jury. In civil cases, other than those in equity and "admiralty, and except where it is otherwise provided in "bankruptcy proceedings, 'the trial issues of fact'— "that is, of all the material issues of fact, — 'in the Circuit "Courts, shall be by jury,' unless the parties or their "attorneys of record, stipulate in writing for the waiver of "a jury. (R. S., Secs. 648, 649.) There is no such stipu-"lation in this case, and there is nothing in the record "from which such stipulation or waiver may be inferred. "It has been said by this court that the trial by jury is "a fundamental guaranty of the rights and liberties of "the people. Consequently, every reasonable presump-"tion should be indulged against its waiver. For these "reasons the judgment below must be reversed."

In the above case there was a plain usurpation of the province of the jury in this, that the court itself undertook to find all the facts which had not been found by the jury by its special verdict.

In the case at bar, the court found *all* the material facts in the case, and then directed the jury to find a verdict in accordance therewith. The Circuit Court arro-

gated to itself the province of deciding as *matter of fact* that plaintiff in error did not rely upon the representations made to its president regarding the rates of freight between Chicago and East Chicago. It further undertook to find, and did find, that the contract which was represented to be in existence between defendants in error and the Chicago and Atlantic Railroad Company, securing to all industries located at East Chicago a rate of 83 per car for all freight between that point and the City of Chicago, would have been, if made, a violation of the inter-state commerce law. It utterly ignored the other counts of the declaration, and the evidence thereunder, as to the representations about the rates of freight from East Chicago to all points north-west, south-west and east being the same as from the City of Chicago. Can it be said that our client has had a trial by jury?

Is the case any different in effect, than it would have been if the court had, of its own volition, and against our protest, discharged the jury, and then done what it did?

We most respectfully submit to this tribunal, that, in the light of the record in this case, our client has been deprived of a trial by jury; that such right, being secured to it by the Constitution of the United States, the case here presented involves the "*application*" of that instrument; and that it is therefore properly before this court for reexamination.

The effect of what we urge is fully appreciated. But is it not more in accordance with the spirit of the act creating the Circuit Courts of Appeals, that many cases should come here for review, where the aggreived party has been denied a right secured by the Constitution, than to hold that such questions were intended to be referred

to the different Circuit Courts of Appeals? Suppose this case had been taken to the proper Circuit Court of Appeals, on what ground would that court have reversed the judgment? Clearly, that the Circuit Court had erred in refusing to submit the questions of fact to the jury, and that in so doing, the trial court had deprived the plaintiff in error of its right of trial by jury secured by the Constitution. Is it not fair to say then that a review of such case involves the application of the Constitution?

The language of the act creating the Circuit Courts of Appeals is peculiar, and, so far as we have been able to discover, was here used for the first time in the legislation of Congress.

The jurisdiction conferred upon this Court to review final judgments and decrees of the highest court of a State in a suit involving the provisions of the Constitution is conferred as follows:

Where a statute of a State or an authority exercised under any State is disputed "on the ground of their being "repugnant to the constitution," etc., "and the decision "is in favor of their validity; or where any title, right, "privilege or immunity is claimed under the constitu- "tion," *etc.*, "and the decision is against the title * * "* specially set up or claimed by either party," the right of re-examination is conferred upon this court. (U. S. Rev. Statutes, 1878, Sec. 709.)

By the fourth paragraph of section 629 (Rev. Statutes) any final judgment or decree in any case in the Circuit or District Court, acting as a Circuit Court, and "brought "on account of the deprivation of any right, privilege or "immunity secured by the Constitution of the United "States" may be re-examined by this Court, irrespective of the sum or value in dispute.

In the act of March 3, 1891, the purpose would seem to have been to confer jurisdiction on this Court in every case wherein it should be necessary to decide any question respecting the interpretation to be given to the Constitution, or whether the Constitution has reference to or governs the question.

As an illustration: In the case of *Hodges et al.* v. *Easton et al.*, *ante*, the judgment of the Circuit Court was reversed by this Court, because the plaintiffs in error had been deprived of the right of trial by jury, as secured to them by the Constitution. Was not that a clear case involving the application of the Constitution?

Although the question arose as matter of practice on the trial, yet, when the case stood for review by a higher court, it then presented for re-examination the question, whether the error complained of involved the application of the Constitution?

There are the strongest grounds for so construing the clause in question as to confer jurisdiction on this Court in any case, when the Circuit Court has, on the trial, as matter of practice and procedure, deprived either party of a right secured by the Constitution, or has otherwise infringed any of the provisions of that instrument.

In the various clauses of the act there is jealous care on the part of Congress that every case to be reviewed, in which an interpretation must be given to the Constitution, such interpretation shall be by the Supreme Court alone. If it be a deprivation of a constitutional right of trial by jury, for the trial court to itself decide the facts, and use the jury as a mere instrument to register the court's findings, then it would seem to be within the spirit, as well as the letter, of the Circuit-Courts-of-Appeals act that such error should find its correction in this Court.

Suppose the plaintiff in error had sued out the writ of error in this case in the proper Circuit Court of Appeals, and that court had erroneously refused to reverse the case, and had decided, that whilst it might have been better practice for the Circuit Court to have submitted the decision of the questions of fact to the jury, yet the judgment ought to be affirmed, can it be contended that the plaintiff in error could, notwithstanding, have its grievance redressed by this Court, under the discretionary power of review, given in the sixth section of the act in question?

The plaintiff in error must certainly fail in that attempt, if the importance of such review should depend upon the construction or application of the Constitution. In that aspect of the case the law says the case should have been brought direct to this Court from the trial court.

We submit that the more the question is looked into, the stronger becomes the conviction that in all cases involving a similar question it was the intention of Congress that the case should be brought here for review, direct from the trial court.

Let it be supposed that in a trial of some case in a circuit court, one of the parties, during the trial, should unlawfully enter the house of his adversary, and, breaking open the strong-box of the latter, should find there and produce on the trial documents which he should offer in evidence: That the opposite party should object to the introduction of such documents, because obtained in violation of the Fourth amendment to the Constitution: That the trial court, after hearing the evidence establishing the unreasonable search and seizure, should, notwithstanding, allow the documents to be introduced in evidence, by reason of which the party thus deprived of

his constitutional right seeks redress in a higher court? Where would he prefer his grievance, if not here?

He could not go to the proper Circuit Court of Appeals, because that court is an especial creation of Congress, and has no jurisdiction of any question arising under the Constitution.

There is in this motion more than an ordinary question of practice and precedure.

Our client, without any malice or bad intention on the part of the distinguished judge who presided in the Circuit Court, has been made a victim of unjudicial and unconstitutional methods, of which this case is its own best commentary. This Court cannot judicially consider the language of the circuit judge in charging the jury, as contained in the printed record (at pages 113 to 114); but, if we are allowed to adopt and state the same as the reasons of the judge for taking the case from the jury; and if our brethren who appear for the defendants in error shall agree with us that the same is a literal report of what the circuit judge said in taking the case away from the jury, then we most respectfully submit the same to this Court without one single word of comment.

If it be suggested that plaintiff in error did not except on the ground here stated, to the action of the Circuit Court in refusing to allow the jury to pass on the facts, we answer that the exception taken to the action of the court was on the specific ground that that court directed the jury to return a verdict for the defendants; that if the error consisted in a denial of the constitutional right of plaintiff in error to a trial by jury, then the exception comprehended that ground of complaint; that, if substance and not form is to govern, then plaintiff in error

has been as effectually denied its constitutional right of trial by jury, as if the Circuit Court had, against our protest, discharged the jury, and itself rendered the verdict.

We, therefore, respectfully ask that the motion to dismiss the writ of error be denied.

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